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Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility

Note by the Secretariat

The present report is submitted in accordance with Human Rights Council resolution 26/19. In the light of the proposed global compact for safe, orderly and regular migration, the Special Rapporteur proposes the development of an agenda within the framework of the United Nations, in parallel to the 2030 Agenda for Sustainable Development, to be known as the 2035 agenda for facilitating human mobility. Based on targets 10.7 and 8.8 of the Sustainable Development Goals, the agenda would encompass eight human mobility goals, together with targets and indicators, aimed at facilitating human mobility in the next 15 years, while ensuring respect for the human rights of all migrants based on the principles of non-discrimination and equality.

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Contents

		Page
I.	Introduction	3
II.	Activities carried out by the Special Rapporteur	3
	A. Participation in consultations and conferences	3
	B. Country visits	3
III.	2035 agenda for facilitating human mobility	4
	A. Introduction	4
	B. Migration: perceptions versus reality	5
	C. 2035 agenda: a long-term strategy	8
	D. Human mobility goals	9
	E. Assessment of progress and financing	22
	F. Conclusions and recommendations	22

I. Introduction

1. The present report, which is submitted pursuant to Human Rights Council resolution 26/19, briefly outlines the activities of the Special Rapporteur on the human rights of migrants during the period from 20 April 2016 to 11 April 2017. The thematic section is dedicated to the development of a 2035 agenda for facilitating human mobility.

II. Activities carried out by the Special Rapporteur

A. Participation in consultations and conferences

2. The Special Rapporteur participated as a panellist in the high-level plenary meeting on addressing large movements of refugees and migrants, held in New York on 19 September 2016. He took part in various events at the high-level plenary meeting, including one entitled "Migration and development: a roadmap to a global compact", organized by the World Bank Group; a round table on working together to end child immigration detention, organized by the Inter-Agency Working Group to End Child Immigration Detention; a side event organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on human rights protection in the context of large movements of migrants and refugees; and the private sector forum on migration and refugees, organized by Concordia in partnership with the Global Policy Initiative of Columbia University, the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees and with the support of the Open Society Foundations and the Swiss Agency for Development and Cooperation.

3. The Special Rapporteur, in collaboration with the respective national human rights institutions, organized workshops on access to justice for migrants in Senegal, on 5 and 6 December 2016, and in Morocco, on 8 and 9 December 2016.

4. On 31 March 2017, the Special Rapporteur organized a consultation in Geneva with civil society organizations and United Nations agencies to review the outcome of the high-level plenary meeting and discuss ways to engage with the two-year process that will result in the adoption of a global compact for safe, orderly and regular migration in 2018.

B. Country visits

5. The Special Rapporteur conducted a visit to Angola from 3 to 10 May 2016. He recommends that Angola develop a comprehensive national migration and mobility strategy and bilateral and multilateral mobility agreements with neighbouring countries in order to protect and promote the human rights of all migrants in the country.

6. The Special Rapporteur also conducted a follow-up visit to Greece from 12 to 16 May 2016. He recognizes the progress made on the adoption of laws and policies aimed at managing migration and border management. In the light of the fact that Greece is the custodian of an external European Union border, the Special Rapporteur recommends that the Government of Greece and the European Union institutions develop durable human rights-based solutions for migrants and asylum seekers in Greece, including with regard to the important issue of border management, and adopt strategic long-term migration and mobility policies in accordance with international human rights law.

7. The Special Rapporteur conducted a visit to Australia from 1 to 18 November 2016. He observed that some of the migration policies of Australia have increasingly eroded the human rights of migrants, in contravention of the country's international human rights and humanitarian obligations. The Special Rapporteur recommends that Australia develop and implement a human rights-based approach to migration and border management, ensuring that the rights of migrants, including undocumented migrants, are always given priority.

III. 2035 agenda for facilitating human mobility

A. Introduction

8. On 19 September 2016, the General Assembly held a high-level plenary meeting on addressing large movements of refugees and migrants, at which the New York Declaration for Refugees and Migrants (resolution A/71/L.1) was adopted. The Declaration establishes a two-year process leading to an international conference in 2018 at which two global compacts, one on refugees and the other for safe, orderly and regular migration, will be presented for adoption. The Special Rapporteur sees the adoption of the global compact for safe, orderly and regular migration not as the end of the process, but as the beginning. As part of the global compact, the Special Rapporteur calls upon States to go beyond the Declaration and impulsive reactions on the basis of what they perceive to be the current problems and to develop a human rights- and evidence-based governance framework for international migration and mobility.

9. The Special Rapporteur takes note of the positive development of migration and mobility being discussed within the framework of the United Nations, which has resulted in the inclusion of migration-related targets in the Sustainable Development Goals and the New York Declaration, in which States reaffirmed their commitments to the protection of the human rights of migrants and to the establishment of a global compact for safe, orderly and regular migration. The Special Rapporteur stresses the importance of ensuring that the commitment of States to the protection of the human rights of migrants[1] is upheld and translated into the adoption of the global compact.

10. Taking into consideration the current dynamics of push and pull factors and in the light of his observations on the need to facilitate mobility, the Special Rapporteur suggests that the global compact for safe, orderly and regular migration should include provisions on the development of a 2035 agenda for facilitating human mobility under the framework of the United Nations, in parallel to the 2030 Agenda for Sustainable Development (General Assembly resolution 70/1).

11. The golden thread of such an approach would primarily be to address targets 10.7 and 8.8 of the Sustainable Development Goals through a rights-based, age- and gender-sensitive plan.

12. The Special Rapporteur envisions an agenda that, building on target 10.7, outlines how human mobility can be facilitated effectively and underlines the importance of taking a long-term strategic approach to developing more accessible, regular, safe and affordable mobility policies and practices that will place States in a better position to respond to the significant demographic, economic, social, political and cultural challenges that lie ahead.

13. Given that the global compact for safe, orderly and regular migration will be submitted for adoption in 2018, the agenda could be launched in 2020 following a two-year preparatory process. The agenda would encompass a modest but achievable number of universal goals aimed at protecting the human rights of migrants and facilitating mobility in the subsequent 15 years, with precise targets and indicators, realistic timelines and benchmarks and effective accountability mechanisms.

[1] All references to migrants throughout the present report should be read as "migrants, regardless of their status or circumstances".

B. Migration: perceptions versus reality

All migrants are entitled to human rights, on the basis of the principles of equality and non-discrimination for everyone

14. The Special Rapporteur wishes to recall the New York Declaration, in which States recognized that, in accordance with the obligations of States under international law, refugees and migrants must have comprehensive policy support, assistance and protection and that their human rights and fundamental freedoms and their need to live in safety and dignity must be fully respected.

15. All migrants should be recognized and treated with respect and dignity as equal rights holders, regardless of their migratory status in relation to the sovereign territory in which they find themselves. Under international law, States have the duty to protect migrants at all stages of the migratory process and to provide them with access to justice to remedy any discriminatory treatment or human rights violations that they experience.

16. The Special Rapporteur proposes a fundamental shift in the way that migration is perceived and framed. Migration itself is a natural part of human existence; it is neither a crime nor a problem, and it has the potential to be a solution. Accordingly, migration governance is not a matter of closing off borders and keeping people out, but one of regulating mobility by opening accessible, regular, safe and affordable migration channels and promoting and celebrating diversity.

17. The Special Rapporteur sees a strong need to regulate mobility, which would facilitate migration and the control thereof, instead of restricting migration movements through the use of pushbacks, interception and detention. States must move from a zero-tolerance attitude to one of harm reduction, thereby undercutting the criminal organizations responsible for migrant smuggling, addressing the security concerns of States and, ultimately, reducing human suffering and saving lives. If States want to regain control over their borders, migrants should be provided with regular, safe, affordable and accessible mobility channels.

18. In order to regulate mobility effectively, States are required to adopt a whole-of-government approach to migration, taking into account all aspects thereof, including all benefits and challenges in terms of economic growth, demographic changes, cultural diversity, social integration, human rights and respect for the rule of law. By taking a long-term strategic approach, States will be better positioned to respond to the significant imminent demographic, economic, social, political and cultural challenges.

Fostering a fact-based public narrative on migration is essential

19. Political rhetoric on migration most often does not reflect reality, notwithstanding facts and figures to the contrary. Such rhetoric shapes public perceptions of migration. Any attempt to develop an agenda for migration should therefore outline, for populations of all countries and for their politicians, an inspiring narrative of how well-governed mobility could contribute to the prosperity and stability of society.

20. According to United Nations statistics for 2015, approximately 244 million people were living outside their countries of origin worldwide, including almost 20 million refugees. Despite a 41 per cent increase compared with 15 years ago, this figure accounts for only 3.3 per cent of the global population in 2015, against 2.8 per cent in 2000. The rate of migration actually slowed down during the period from 2010 to 2015, in contrast to the previous five-year period. Between 2000 and 2015, Asia was the region that received the highest number of additional migrants, with a total of 26 million.[2]

21. Ageing populations in some regions have caused a shift in demographics leading to labour shortages. From a purely economic perspective, such demographic shifts will add

[2] See Department of Economic and Social Affairs, *International Migrant Stock: the 2015 Revision*.

pressure and impetus to the need to balance labour supply and demand,[3] clearly contradicting the common conception that migrants are "job stealers".

22. Against the backdrop of a poor economic climate, the rise in nationalist populist parties and the tragic terrorist attacks around the world, xenophobia and hate speech have increased, causing a significant upward trend in negative perceptions of migrants and creating a stumbling block in the development of more efficient evidence- and human rights-based policies.

23. The use of appropriate language and studies, the presentation of facts and policies that favour diversity and the inclusion of migrants are key to facilitating the integration of migrants and their contribution to development and to reducing negative populist representations of migrants. States therefore need to develop a long-term, human rights-based strategic vision and narrative on mobility and diversity that will give meaning, coherence and direction to current and future action.

24. A human rights-based approach would have a positive impact on the public discourse and facilitate the integration of migrants into society by changing the general perception of migration as being a burden and expense to being a shared responsibility and valuable investment.

Migration supports development and prosperity at the national, regional and global levels

25. Migrants are drivers and enablers of development, contributing to economic growth wherever they go. Studies show that immigration has a minimal impact on unemployment among residents in host countries and a positive overall impact on employment generation and investment.[4] Increasing evidence suggests that migrants contribute more in direct and indirect taxes than they consume in government benefits.[5] In 2015, migrants sent approximately $601 billion in remittances, some $441 billion of which developing countries are estimated to have received, nearly three times the amount of official development assistance.[6]

26. Economic research also demonstrates that migrants complement rather than compete with citizens, therefore generating greater overall productivity within the economy.[7] In a study,[8] the impact of the global recession was shown to decrease but not eradicate this positive phenomenon, disproving the argument that an economic downturn justifies repressive policies against migrants. Although some nationals may be displaced by migrants in small and other specific labour markets, it is better to address such marginal consequences through retraining policies rather than by trying to curb migration.

27. Although the economic incentives to migrate are diverse and, for many, very strong, they are constantly evaluated and scrutinized by potential migrants. It is true that most migrants try to go to countries where there are jobs and where they can start integrating into society and creating a future for themselves and their families. It is equally true that prime destination countries have jobs available for migrants in the official or underground labour

[3] Ernst and Young, "Tracking global trends: how six key developments are shaping the business world" (2011). Available from https://issuu.com/ezra1110/docs/tracking_global_trends/32.

[4] See Organization for Economic Cooperation and Development, *International Migration Outlook 2013*.

[5] OHCHR, *The economic, social and cultural rights of migrants in an irregular situation*, (New York and Geneva, 2014), p. 99.

[6] See World Bank, *Migration and Remittances Factbook 2016*.

[7] David Card, "The impact of the Mariel boatlift on the Miami labour market", *Industrial and Labour Relations Review*, vol. 43, No. 2 (January 1990), pp. 245-257; Mette Foged and Giovanni Peri, "Immigrants' effect on native workers: new analysis on longitudinal data", Institute for the Study of Labour discussion paper No. 8961, 2015; Andri Chassamboulli and Giovanni Peri, "The labour market effects of reducing the number of illegal immigrants", *Review of Economic Dynamics*, vol. 18, No. 4 (October 2015).

[8] Francesco D'Amuri and Giovanni Peri, "Immigration, jobs and employment protection: evidence from Europe before and during the Great Recession", Bank of Italy working paper No. 886, 2012.

markets. Migrants respond to the demand for labour, and, under normal circumstances, when demand declines in a particular area, so does migration to it.

As long as "push and pull" factors exist, migrants will continue to move

28. Many factors influence the decisions of migrants as to why, when, to where and how they want to migrate. The main push factors are poverty, violence, discrimination and poor governance. The main pull factors are official or unacknowledged labour needs and family reunification. Public discussion about these factors is, on the whole, extremely shallow, often constituting nothing more than scaremongering about "benefit scroungers" and migrants "stealing jobs".

29. Rather than addressing the reasons behind migration, States often respond to increased migration movements by creating and progressively increasing barriers to mobility, with a focus on securitization, repression and deterrence policies. Their central objective has been to secure their borders by building fences, using violence to stop undocumented population movements across land and sea borders, using long-term detention as a deterrence tool and carrying out collective expulsions to countries of origin and transit, all of which are too often conducted without sufficient assessment of individual protection needs and adequate oversight. Moreover, States have moved their border management activities beyond their territorial borders, extending them to the high seas and third countries.

30. Repressive policies and the lack of responses to push and pull factors of migration only serve to create the perfect conditions for underground labour markets and smuggling rings to flourish. States often do not address the reasons why individuals want or need to move from their countries of origin and why employers in destination countries seek to employ them, and yet they have created and progressively increased barriers to mobility. The so-called "migration crisis" is policy driven. Placing restrictions on mobility is part of the problem, not of the solution.

31. The continued ineffectiveness and the paradoxes of border management and the lack of a coherent human rights-based framework for migration have been vividly and visibly exposed by the tragic deaths of migrants in transit, propelling the issue of the human rights of migrants into the spotlight. Suffering is also experienced at all other stages of migration. The repression of undocumented migrants and the externalization of borders do little but increase the suffering of migrants and have the effect of entrenching smuggling rings and exploitative recruiters and employers. Migrants will continue to arrive. The only solution is to adopt well-managed migration policies that facilitate the mobility of migrants and provide States with the border control that they need.

Facilitating mobility means offering regular, safe, accessible and affordable mobility solutions

32. In order to facilitate mobility, States must increase regular channels for migration and the taxation of mobility, through the progressive expansion of visa liberalization and easily accessible visa facilitation regimes and/or schemes, such as refugee settlement, temporary protection, visitor, family reunification, work, resident, retirement and student visas, with all the identity and security checks that efficient visa regimes can provide.

33. In effect, States must reclaim the mobility market from the smugglers and adopt measures to regularize undocumented migrants. Migrants do not want to be undocumented or use smugglers, but are forced to do so owing to a lack of regular, safe, accessible and affordable mobility options. They would rather pay a reasonable fee to a visa officer than suffer extortion at the hands of smugglers. They would adapt to the requirements of States for access to regular mobility solutions within a reasonable time and arrive at border posts, presenting official identity and travel documents in good order, rather than embarking with their families on a journey riddled with suffering. They would work in official labour markets, even for the minimum salary, instead of being exploited and abused in underground labour markets. Well-designed mobility policies are needed to induce this virtuous cycle.

C. 2035 agenda: a long-term strategy

34. In order to respond to the complexity of human mobility, as explained above, States are required to develop a long-term strategic vision of what their mobility policies will look like in a generation from now, with precise timelines and accountability benchmarks. Such a long-term vision is similar to the strategic planning of States for policies on energy, environment, trade, food security, public transit, infrastructure and industries, in order to determine the investments needed to achieve the objectives.

35. The Special Rapporteur suggests that States should also develop such a vision for migration policies. The timeline for migration policies always seems to be based on the now, with States focusing on "stopping migration now", "sending back migrants now" or "bringing in technicians or low-skilled migrant workers now". The Special Rapporteur proposes a more considered, fact-based response to push and pull factors with a 15-year vision for how mobility could be effectively governed, which would allow States to take well-planned action in response to a so-called crisis.

36. The first step in changing the collective mindset is to accept that migrants will come and go no matter what because of push and pull factors, which, on the whole, are not adequately addressed. Facilitating increased mobility and matching skills to labour needs, as in an accessible, regular, safe and affordable labour market, with appropriate visa systems and security controls, would ensure that most migrants would use regular mobility channels.

37. Solutions to human mobility needs can be developed along two major axes, as outlined by the Special Rapporteur in previous reports:

(a) Developing refugee settlement programmes to serve more refugees than the current 1 per cent. Private sponsorship of refugees should be included in these programmes, because it progressively builds a constituency of nationals who are in favour of welcoming refugees;

(b) Recognizing real labour needs and opening up considerably more visa opportunities or visa-free travel programmes for migrant workers at all skill levels. With appropriate selection and organization, the numbers would be entirely manageable.

38. Such facilitated mobility would have obvious advantages, including the fact that it would:

(a) Significantly reduce the market for smugglers and unethical recruiters;

(b) Enable all security checks by intelligence agencies to be made in a timely manner and mostly in the destination country;

(c) Provide the opportunity to show the electorate of destination countries that borders are respected, that authorities are managing migration properly, that employers are integrating migrants into the labour market, that investments have been made in integration programmes and that the fearmongering discourse of nationalist populists is based on stereotypes, myths and fantasies that can be countered by facts.

39. The inclusion of migrants in the Sustainable Development Goals demonstrated that all States without a doubt acknowledged the importance of better-governed mobility. Given that the process is already under way, the Special Rapporteur proposes harnessing the energy of this existing process and developing recommendations on how it can be further developed for migration.

40. With that in mind, the Special Rapporteur proposes developing a 2035 agenda for facilitating human mobility, which would translate the 2030 Agenda for Sustainable Development into "bite-sized" and achievable goals, targets and indicators. The 2030 Agenda already refers, in certain Sustainable Development Goals, to the human and labour rights of migrants, including:

(a) Protect labour rights and promote safe and secure working environments for all workers, including migrants, especially women migrants, and those in precarious employment (target 8.8);

(b) Reduce the transaction costs of migrant remittances to less than 3 per cent and the elimination of remittance corridors with costs higher than 5 per cent by 2030 (target 10.c);

(c) Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies (target 10.7);

(d) Promote and enforce non-discriminatory laws and policies for sustainable development (target 16.b);

(e) Promote the rule of law at the national and international levels and ensure equal access to justice for all, including migrants (target 16.3);

(f) Provide legal identity for all, including birth registration, by 2030 (target 16.9);

(g) Increase significantly the availability of high-quality, timely and reliable data disaggregated by, among other things, migratory status by 2020 (target 17.18).

41. On the basis primarily of targets 10.7 and 8.8, the Special Rapporteur intends to recommend that States and other stakeholders develop long-term strategies to fulfil their obligations towards all migrants, including migrants in a precarious situation, as set out in the Sustainable Development Goals.

D. Human mobility goals

42. Building upon the experience of his mandate since 2011, the Special Rapporteur presents the following agenda as a road map as a way of demonstrating the content, scale, practicability and scope of a future 2035 agenda. The agenda encompasses eight human mobility goals, together with targets and indicators, aimed at facilitating human mobility while ensuring respect for the human rights of all migrants, regardless of their status, skills, age, gender or sexual orientation.

43. The Special Rapporteur proposes the following goals:

Human mobility goals

Goal 1. Offer regular, safe, accessible and affordable mobility solutions to all migrants, regardless of their status or skill level

Goal 2. Protect the labour and human rights of all migrant workers, regardless of their status and circumstances

Goal 3. Ensure respect for human rights at border controls, including return, readmission and post-return monitoring, and establish accountability mechanisms

Goal 4. End the use of detention as a border management and deterrence tool against migrants

Goal 5. Provide effective access to justice for all migrants

Goal 6. Ensure easy access for all migrants to basic services, including education and health

Goal 7. Protect all migrants from all forms of discrimination and violence, including racism, xenophobia, sexual and gender-based violence and hate speech

Goal 8. Increase the collection and analysis of disaggregated data on migration and mobility

Goal 1. Offer regular, safe, accessible and affordable mobility solutions to all migrants, regardless of their status or skill level

Rationale

44. In the New York Declaration, States committed to "consider facilitating opportunities for safe, orderly and regular migration, including, as appropriate, employment creation, labour mobility at all skills levels, circular migration, family reunification and education-related opportunities". In order to implement that commitment, they need to develop and implement long-term national migration policies, in line with their obligations under international human rights law, ensuring that regular, safe, affordable and accessible avenues are available for all migrants. The overall goal in terms of governing mobility is for most migrants to use regular channels to enter and stay in destination countries, thereby reducing considerably the size of the underground migrant smuggling market. States must recognize and address what may be termed as the pull factors of migration, such as unrecognized demands for low-skilled labour in economic sectors that are not met locally, and provide safe, regular, accessible and affordable migration channels to meet the demand for such low-skilled jobs. When regular migration channels fail to properly reflect labour market needs, migrants are more likely to be offered undocumented migration solutions by smuggling rings and unethical recruiters and become victims of exploitation and abuse.

45. Opening up more regular migration channels for migrants at all skill levels would considerably reduce undocumented migration and limit the power of smuggling rings. Allowing people to look for work on the regular labour market would present opportunities for both employers and workers. Abolishing sponsorship-based temporary migrant worker programmes and providing open work visas would considerably reduce labour exploitation.

46. Through resettlement programmes for refugees and the provision of humanitarian visas and other opportunities, it is well within the means of States to develop the mechanisms necessary for providing resettlement opportunities to refugees. A worldwide, well-governed distribution key that provides resettlement programmes for refugees and humanitarian visas and other opportunities will create a reliable long-term programme and ensure that a large number of refugees will seek resettlement rather than spend large sums of money and risk their lives and those of their children in smuggling operations. This would considerably reduce the market for smugglers, as well as the cost of refugee status determination procedures in the countries of destination.

47. In order to introduce a human rights-based approach to the mobility of human resources in the negotiation of bilateral and multilateral trade agreements, States should, in partnership with the business communities involved, considerably enlarge the elements of human mobility and labour migration in trade negotiations, and representatives of migrants should be offered meaningful opportunities to comment on draft trade agreements as key stakeholders.

48. Much of the labour exploitation that migrants suffer is linked to recruitment agencies. In accordance with international human rights standards, private actors must, as a minimum, respect the human and labour rights of their workers. The private sector, including recruitment agencies and employers, plays an important role in the labour exploitation of migrants and must therefore be part of the solution.

Targets

1.1. Protect the human rights of all migrants, in compliance with international human rights standards

1.2. Adopt and enforce human rights-based, coherent and comprehensive national migration policies to ensure regular, safe, affordable and accessible migration options for all migrants

1.3. Considerably increase the number of resettlement and humanitarian visa options for refugees

1.4. Create multiple labour migration opportunities, including for low-skilled migrants, to incentivize their use of regular migration channels, by establishing common and accessible visa and work permit regimes

1.5. Abolish all temporary migration schemes, such as those based on single-employer sponsorship mechanisms or *kafala* systems, in favour of open work visas

1.6. Facilitate labour mobility for migrants at all skill levels through regional organizations, regional consultative processes, bilateral and regional agreements for the free movement of persons and bilateral and regional trade agreements

1.7. Ensure that appropriate governance of migration promotes the optimal matching of job skills to jobs and of labour supply to labour demand between countries

1.8. Counteract deskilling and increase the proportion of migrants who are working at the skill level that is most relevant to their education, training and work experience, so as to facilitate their integration into the local labour force and their reintegration into the labour market in the country of origin

1.9. Reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent

1.10. Consider providing access to permanent residency (or long-term residence permits) and citizenship to all migrants after a reasonable period of effective residence under any temporary migration regime

1.11. Promote the financial inclusion of migrants, for example, by lowering the costs of remittances and promoting digital financial services, and provide incentives for migrants to engage in trade between countries of origin and destination

1.12. Promote a strategy to enable, engage with and empower migrant diasporas and their entrepreneurship

Indicators

(a) Increased number of countries that have ratified relevant international human rights and labour law instruments providing for the equality of treatment for all migrant workers in respect of employment;

(b) Time frame and coverage of national policy on enhancing international cooperation to facilitate regular, safe, affordable and accessible migration, in line with human rights standards, including through labour mobility at all skill levels;

(c) Time frame and coverage of national policy on ending criminalization and externalization approaches to migration control, which aggravate the precarious condition of migrants;

(d) Increased number of bilateral and multilateral visa facilitation and liberalization agreements, including for visits, work, job searches, family reunification, refugee resettlement, humanitarian activities, studies, internships, retirement and other purposes;

(e) Increased number of regional and bilateral mobility agreements;

(f) Increased number of bilateral and multilateral agreements on migration that provide for human and labour rights safeguards and comply with international human rights and labour standards, including effective complaint and redress mechanisms;

(g) Increased number of ex ante human rights impact assessments conducted during trade negotiations to identify and mitigate risks;

(h) Increased number of accessible visas and work permits provided at all skill levels;

(i) Increased regulation and effective monitoring of the recruitment industry;

(j) Availability of disaggregated data on all aspects of migration programmes and policies, in particular on undocumented migration and recruitment costs for migrants and employers.

Goal 2. Protect the labour and human rights of all migrants, regardless of their status and circumstances

Rationale

49. Migrants, especially those with a precarious residence status, are vulnerable to abuse and labour exploitation. Certain categories of migrants, such as migrant women and children, temporary migrant workers and undocumented migrants are more intrinsically vulnerable to abuse, violence and exploitation. The physical, sexual and psychological abuse of female migrant domestic workers appears to be widespread, and they are often exposed to health and safety threats without being provided with adequate information and support. For most migrants, it can be very difficult or impossible to obtain meaningful access to an effective remedy for rights violations.

50. Underground labour markets act as a magnet for undocumented migration at the request of exploitative employers and constitute a major pull factor for exploited migrant workers and a key trigger of the smuggling market. It is, however, difficult to reduce those markets significantly owing to the favourable impact of lower labour costs on certain economic sectors, in particular the construction, agriculture, caregiving, hospitality, fisheries and extraction industries, the acquiescence of consumers, the indifference of politicians and the absence of complaints by migrants owing to their fear of detection, detention and deportation. Nevertheless, action needs to be taken to achieve mobility without distortions to the labour market, which would entail considerably reinforcing labour inspection mechanisms, vigorously targeting exploitative employers and empowering migrants to defend their rights.

51. Proactive regularization procedures should be readily available to help migrants who work and are socially integrated to remain in the country with legal status and to fight exploitation and defend their rights, just like any other workers.

52. A comprehensive, detailed national migration policy needs to be drawn up and implemented effectively in order to combat labour exploitation of migrants. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Multilateral Framework on Labour Migration of the International Labour Organization (ILO) provides useful guidance in that respect.

Targets

2.1. Effectively protect the labour rights of migrants, including by ensuring equal opportunity and treatment in employment, in compliance with international labour standards

2.2. Implement policies that effectively sanction employers who exploit migrants, and increase the share of migrants who benefit from cross-border recognition of skills and qualifications and the portability of social security benefits

2.3. Promote the progressive formalization of the informal sectors of industries in which migrants are often exploited, such as construction, extraction, fisheries, hospitality and caregiving

2.4. Ensure ethical recruitment intermediaries at both ends of the migration process by establishing effective government regulatory frameworks and institutional monitoring mechanisms for the labour recruitment industry and by using all available international cooperation channels

2.5. Facilitate the unionization of and collective bargaining by migrants, especially in the economic sectors in which migrants are in the majority and in the industries in which they are often exploited

2.6. Increase effective labour inspection systems with a sufficient number of labour inspectors, who should be well trained in international human rights and labour standards

2.7. Increase labour inspections in private households for the protection of migrant domestic workers

2.8. Ensure easy access for all migrants to labour dispute resolution institutions, without fear of detection, detention and deportation

2.9. Pursue publicly funded social protection policies in critical areas that guarantee the well-being of the entire community, including migrants

2.10. Facilitate the regularization of migrants who work and are socially integrated

Indicators

(a) Increased number of countries whose national legislation and policies provide for equality of treatment for all migrants in respect of employment, including through the protection of the labour rights of migrants and their equal access to social security benefits and redress mechanisms;

(b) Reduction of upfront costs for migrants, especially recruitment fees;

(c) Increased regulation and effective monitoring of the recruitment industry;

(d) Increased pre-departure and post-arrival training of migrants;

(e) Increased number of information campaigns that promote decent work and the protection of the human and labour rights of all migrants;

(f) Mutual recognition of foreign educational qualifications, including through the conclusion of bilateral and multilateral agreements;

(g) Number of migrants who have transitioned from informal to formal sectors of the economy;

(h) Number of undocumented migrants who have been regularized;

(i) Number of low-skilled workers, especially migrant women and children, who file complaints of labour exploitation and obtain compensation;

(j) Number of unionized migrants involved in collective bargaining in the economic sectors in which they are traditionally exploited;

(k) Number of migrants with equal access to social security and benefiting from the cross-border portability of earned social security benefits, such as pensions, including through the conclusion of bilateral and multilateral agreements;[9]

(l) Disaggregated data showing the proportion of migrant workers in the various informal sectors and underground labour markets of the economy;

(m) Disaggregated data showing the proportion of migrants who have reported cases of violations of their human and labour rights, including forced labour, discrimination and unlawful termination of employment, and the proportion of victims who received compensation.

[9] ILO, *Fair Migration: Setting an ILO Agenda*, report I (B) prepared for the 103rd session of the International Labour Conference, 2014 (ILC.103/DG/IB) (Geneva, 2014).

Goal 3. Ensure respect for human rights at border controls, including return, readmission and post-return monitoring, and establish accountability mechanisms

Rationale

53. Human rights are not reserved for citizens; they benefit everyone, everywhere. States must promote and protect the rights of all in their territory or within their jurisdiction, without discrimination, regardless of status and circumstances. While States have the power to admit, refuse to admit or return migrants, they equally have an obligation to respect the human rights of migrants in the process.

54. States must increase their search and rescue capacity and refrain from pushbacks at land and sea borders. The militarization of border control creates unnecessary suffering and leads to violations of human rights and humanitarian law at borders. States need to develop procedures, guidelines or systems for ensuring that search and rescue is implemented as a paramount objective, taking into account what should be done with those who are rescued.

55. Upon arriving undocumented in countries of transit or destination, all migrants fall within the category of irregular migrants. Prompt and proper individual screening and assessment procedures are required in order to effectively identify their specific vulnerabilities and determine the legal protection frameworks that meet their needs. The lack of individual assessments and of the possibility for migrants to state their claims, outlining the risks they may face when returned to their countries of origin, creates a potential violation of the international principle of non-refoulement. The Special Rapporteur stresses that the principle is stronger as codified in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as absolute and without exception, than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify as refugees under the Convention relating to the Status of Refugees or national law and even when national security is involved. Accordingly, non-refoulement under the Convention against Torture must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases in which protection against refoulement under refugee law may not be available.

56. Effectively ensuring the proper protection of the human rights of migrants is not possible in the absence of well-functioning asylum systems and of adequate and appropriate infrastructure for managing large movements of migrants. Despite legal prohibitions, pushbacks and refoulement to countries of origin and third countries with weak rule of law and poor asylum systems have been improperly conducted under the broad auspices of bilateral agreements. States must not return anyone under a readmission agreement without effective oversight by a post-return human rights monitoring mechanism that verifies whether the human rights of returnees are actually respected.

57. The return of migrants who do not meet the required international or national legal standards to remain in their host country must be conducted in safety, with regard to dignity and respect for human rights, on the basis of: (a) the primacy of voluntary returns; (b) cooperation between States of origin and reception; and (c) enhanced reception and reintegration assistance for those who are returned. Children, whether unaccompanied, separated or accompanied by their parents or other caregivers, should only be returned or repatriated when it has been determined to be in their best interest through an appropriate procedure before a competent institution with proper representation of the child. Families should never be separated unless separation is necessary to ensure the best interest of the child.

Targets

3.1. Protect the lives and safety of migrants and ensure the rescue of and immediate assistance to all migrants facing risks to life or safety, in accordance with the principles and practical guidance on the protection of the human rights of migrants in vulnerable situations (A/HRC/34/31), by developing and effectively implementing procedures and guidelines

3.2 Implement a human rights-based approach to migration and border management, ensuring that the rights of all migrants are always the first consideration

3.3 Respect and protect the human rights of all migrants at borders, both at entry and return, with special attention paid to vulnerable groups, such as unaccompanied children, families with children, pregnant women, persons with disabilities, asylum seekers, refugees, potential victims of trafficking and elderly migrants

3.4 Conduct full individual assessments for all migrants in order to effectively identify their vulnerabilities and the legal frameworks under which their needs will be met and their rights protected

3.5 Decriminalize undocumented entry and stay

3.6 Review national and regional border policies to ensure that the human rights of all migrants at international borders are upheld

3.7 Develop and implement gender- and age-sensitive guidelines to protect migrants in precarious situations

3.8 Adopt approaches that reduce the precariousness of migrants, in particular by avoiding the securitization of migration policies and the externalization of border control

3.9 Returns should be carried out in full respect of international human rights law, in conditions of safety and dignity and with due procedural guarantees

3.10 Systematically implement post-return human rights monitoring and ensure that such monitoring is part of every readmission agreement

Indicators

(a) Increased number and proportion of migrants protected as a result of search and rescue operations;

(b) Considerably reduced number of undocumented migrants who are killed, injured or become victims of crime or violence while seeking to cross maritime, land and air borders;

(c) Pushback operations and collective expulsions are stopped;

(d) Regular revision of bilateral and regional readmission agreements to ensure their compliance with international human rights standards, thus protecting the needs and rights of migrants;

(e) Policies and practices aimed at detecting vulnerabilities and assessments of the protection needs of migrants arriving at international borders are implemented and followed up with appropriate protection measures;

(f) Laws, policies and practices that criminalize undocumented migration are abolished and replaced by legislation and regulations that qualify undocumented entry as an administrative rather than a criminal offence;

(g) International cooperation is reduced on immigration policies of externalization according to which migrants are prevented from moving on and obliged to remain in countries of transit in which their rights are not respected, and all international cooperation on immigration policies includes the strengthening of the national human rights systems and institutions of countries of origin and transit;

(h) Returns are decided after following a strict procedure in which the migrant is duly represented, has access to appropriate legal assistance and interpretation services and has an effective opportunity to explain why a return would not be in respect of his or her rights;

(i) Reintegration programmes are provided for migrants who are returned to their countries of origin;

(j) Collection and analysis of disaggregated data on all aspects of border management, including return of migrants.

Goal 4. End the use of detention as a border management and deterrence tool against migrants

Rationale

58. It is a worrying trend that immigration detention is extensively used as a border management and deterrence tool against migrants and too often as a means to prevent their access to justice. In line with international human rights law, freedom must be the default position and detention the exception, used only as a measure of last resort. Detention must be reasonable, necessary, proportionate, decided on a case-by-case basis and enforced for the shortest possible period of time. Administrative detention can be justified only if an individual presents a danger to the public or risks absconding when their presence is necessary in further proceedings, and such determinations must be made individually and on the basis of evidence. Furthermore, when detention becomes a routine measure of border enforcement, it may be, per se, arbitrary insofar as it is neither an exceptional measure of last resort, nor based upon a meaningful individualized assessment of risk.

59. The increasing practice of migration detention is not automatically accompanied by assurances of legal guarantees and basic human rights protection for detainees. The access of migrants to justice is severely hampered by a failure to guarantee appropriate detention safeguards for vulnerable individuals and access to proper legal representation, legal aid, consular services, interpretation and translation services and effective remedies.

60. The impact of prolonged detention, coupled with the frequently inhuman detention conditions (namely, overcrowding, unsanitary personal hygiene facilities and kitchens and insufficient access to health care, family members, lawyers, international or civil society organizations and physical and recreational activities), has a devastating effect on the physical and mental health of migrants. Long periods of immigration detention can also lead to sustained barriers to the ability of migrants to claim their economic and social rights, even after having been released.

61. Unaccompanied migrant children and families with children must never be detained for reasons relating to their administrative immigration status. The detention of children, even for short periods, can have severe psychological consequences for their development. The Committee on the Rights of the Child and other human rights mechanisms have made it clear that immigration detention can never, ever, be in the best interest of a child and that the immigration detention of children, whether unaccompanied or with their families, always constitutes a violation of their rights. Consequently, both unaccompanied migrant children and families with children should always be provided with alternatives to detention.

62. Many rights-based alternatives to detention exist, including registration requirements, the deposit of documents, the payment of bonds or bail or the provision of a surety or guarantor, reporting requirements, case management or supervised release, designated residence, electronic monitoring and home curfew or house arrest. A number of countries have moved towards open reception facilities, in particular for vulnerable migrants such as unaccompanied minors and families. However, prolonged immigration detention and its associated negative human rights consequences continue in many countries.

Targets

4.1. Clearly define and exhaustively enumerate the reasons for immigration detention in legislation, in accordance with international human rights law

4.2. Ensure that the detention of migrants is always a measure of last resort, permissible only when reasonable, necessary, proportionate, decided on a case-by-case basis and enforced for the shortest possible period of time

4.3. Expeditiously and completely end the immigration detention of children and their families, and protect the rights, dignity, welfare and best interests of migrant children in all cases

4.4. Ensure timely and effective access to justice for all migrants in detention, regardless of their status and circumstances, including access to competent lawyers, competent interpreters and translators, legal aid and judicial assistance programmes, non-governmental organizations, consular authorities and asylum procedures, and the effective and independent external monitoring of all migrant detention facilities

4.5. Promote, develop and make use of viable, rights-based alternatives to detention

Indicators

(a) Judicial appeals of all detention orders are automatically implemented;

(b) Mandatory detention of migrants is abolished;

(c) The number of migrants in immigration detention is considerably reduced;

(d) Alternatives to detention are created and expanded;

(e) The proportion of migrants who are released into non-custodial alternatives to detention is considerably increased;

(f) All forms of detention of migrant children and their families on the basis of their immigration status or that of their parents are abolished;

(g) Increased number of countries having ratified the Optional Protocol to the Convention against Torture and adopted national preventive mechanisms mandated to visit all places of deprivation of liberty within their jurisdiction, including places where migrants are detained.

Goal 5. Provide effective access to justice for all migrants

Rationale

63. Migrants face discrimination and exploitation in the workplace and sometimes experience forced labour. They often find themselves in debt bondage as a result of exorbitant recruitment fees. Nevertheless, migrants most often do not seek redress for the violations of human rights and labour standards that they suffer, owing to their limited command of the local language, their lack of knowledge of the laws and systems, cultural barriers and the fear of detection, detention and deportation. This holds especially true for the most precarious migrants, including undocumented migrants, temporary migrant workers in sponsorship programmes and live-in migrant domestic workers, most often women.

64. Immigration legislation and regulations often restrict considerably the access of migrants to effective recourse and remedies, thus limiting their access to justice. Perpetrators of abuse, exploitation, violations of rights and violence against migrants too often benefit from practical immunity. Effective and accessible justice systems can be tools to overcome exclusion, discrimination and marginalization, through the development of progressive case law on economic and social rights, the enforcement of the human and labour rights of migrants and the systematic enforcement of laws prohibiting their exploitation by private or public actors.

65. Facilitating effective access to justice would go a long way towards, on the one hand, legitimizing new migration policies by showing that territorial sovereignty and human rights are not incompatible and, on the other, changing perceptions regarding migration by combating stereotypes. When migrants actually go to court and the court proclaims that migrants have rights, citizens and Governments do listen. Conversely, States must ensure that labour inspections target exploitative employers rather than exploited migrant workers. The key to ending the practical immunity of all those who abuse and exploit migrants in a precarious situation is to ensure effective access to justice for migrants. Tools need to be made available to overcome systemic barriers to the right to an

effective remedy, such as a lack of unionization or representation, a lack of local language skills, limited awareness of and information about rights and means of redress and significant resource constraints in the form of a lack of legal aid and of translation and interpretation services.

Targets

5.1. Ensure and facilitate equal and effective access for all migrants whose labour or human rights are violated to independent, competent, fair, effective, accountable and responsive judicial and quasi-judicial institutions available for protecting rights, controlling abuses of power and resolving conflicts and, in particular, to national courts, administrative tribunals, national human rights institutions, ombudspersons, labour arbitration and other dispute resolution mechanisms

5.2. Empower migrants to seek and obtain a remedy through the justice system, and strengthen their ability to seek and exercise influence upon law-making and law-implementing processes and institutions

5.3. End discrimination and inequalities for all migrants in the legislation, policies and practices that regulate access to justice

5.4. Strengthen the capacity of courts, tribunals, national human rights institutions, ombudspersons and other dispute resolution mechanisms to ensure accountability for violations of the rights of migrants

5.5. Ensure equal access for all migrants to reliable legal information, effective legal aid, competent and affordable legal representation and competent interpretation and translation services

5.6. Reduce crime and violence against migrants during their migration journeys and in destination countries, and ensure effective protection and assistance to victims of exploitation and abuse

Indicators

(a) Increased number of complaints filed by migrants of human and labour rights violations, discrimination or abuse with any judicial or quasi-judicial institutions;

(b) Increased proportion of cases in which migrants were effectively provided with competent legal representation, adequate legal aid and proper translation and interpretation services;

(c) Increased number of court fee waivers for all those who cannot afford them, including migrants;

(d) Increased number of prosecutions for human trafficking, labour exploitation and forced labour targeting migrants;

(e) Increased number of cases in which migrants are offered special visa protection or other protective measures for victims of trafficking and forced labour.

Goal 6. Ensure easy access for all migrants to basic services, including education and health

Rationale

66. Newly arrived migrants could face a variety of challenges in accessing public services, such as health care, education or housing, given their limited command of the local language and their lack of knowledge of the laws and systems of the host country. The enjoyment of such rights by migrants is effectively hampered in the absence of relevant support, such as the provision of language training or free information on relevant laws and regulations. A related concern is the lack of disaggregated indicators on the economic, social and cultural rights of all migrants, which would be useful for adequate policy-making, including on enhancing the accessibility of such services.

67. Migrants may be more vulnerable to poor health by virtue of their often low socioeconomic status, the sometimes harrowing process of migration and their vulnerability

as non-nationals in the new country. The mental health of migrants is an issue of concern, with factors such as human rights violations before or during the migration process, social isolation caused by separation from family and social networks, job insecurity, difficult living conditions, detention and exploitative treatment potentially having adverse effects. Migrant women and girls often experience more problematic pregnancy and gynaecological health issues as compared with the host population. Those working in domestic services face widespread physical, sexual and psychological abuse and thus require urgent health care and protection. Access to health care for migrants and the level of such care, however, varies enormously, depending on State policies and the immigration status of the migrant.

68. Access to public services, such as health care, education, local police, social services, public housing, labour inspection and health and safety inspection, is key to ensuring that such services are able to perform their mission with the trust of all beneficiaries, including migrants, and that migrants do not fear detection, detention and deportation. Too frequently, immigration enforcement services enlist other public services as auxiliaries for the detection of undocumented migrants or gain access to their databases. Unless firewalls are established between public services and immigration enforcement, vulnerable migrants will never report human rights violations, and perpetrators will benefit from practical immunity.

69. In the light of the fact that migration is most often an urban phenomenon, cities are best placed to ensure the integration of migrants. Municipal authorities, which are close to the needs and interests of the whole community, have already developed excellent policies and practices and shown leadership in integrating migrants into the population through their policies, without distinction of any kind. Local authorities in over 40 countries allow some form of local electoral involvement of migrants in order to increase government accountability to migrants who cannot vote even though they work, pay taxes and assume other civic responsibilities.[10] Such initiatives would help to integrate them into their new communities and ensure their access to basic services at the municipal level through participation in decision-making processes that affect their lives.

Targets

6.1. Establish firewalls between immigration enforcement and public services, thereby allowing for access to justice, housing, health care, education, police, social and labour services for all migrants, without fear of detection, detention and deportation

6.2. Provide equal and equitable access for all migrants and members of their families to adequate, affordable, accessible and quality health care, including mental, sexual and reproductive health care, and to information and education, including on family planning

6.3. Ensure equal access for all migrants to quality education at all levels in destination and transit countries, and enrolment therein, including formal schooling (primary, secondary and higher education), adult education, on-the-job and vocational training, language training and lifelong learning opportunities

6.4. Ensure access for all migrants to adequate, safe and affordable housing and to other basic services

6.5. Provide cities with the powers and resources needed for the integration of migrants, regardless of their status and circumstances

Indicators

(a) Increased number of countries that have developed national and municipal legislation, policies, plans and programmes on equal access to services for all migrants, allocated the powers and resources needed for the integration of migrants and established firewalls between immigration enforcement and public services;

[10] IOM, "The Role of IOM: Migrants and the Equal Participation in Political and Public Affairs".

(b) Increased proportion of migrants with equal access to adequate, affordable, accessible and quality health care, education and housing;

(c) Access to universal health-care coverage, formal education, language training, vocational training and lifelong education, and cross-border recognition of skills and qualifications, thereby facilitating the social and economic integration of all migrants.

Goal 7. Protect all migrants from all forms of discrimination and violence, including racism, xenophobia, sexual and gender-based violence and hate speech

Rationale

70. Mobility and diversity are already and will increasingly be the hallmark of contemporary societies, especially in dynamic urban areas which welcome most of the world's migration. Often at opposite ends of the social spectrum, the arts community and the business community know that diversity and mobility contribute to the dissemination of creativity, innovation, ideas and know-how and to wealth production.

71. The view and labelling of migrants as illegal is counterproductive and is not supported by international law. Although migrants who arrive in countries of destination without documents may be considered to be in an irregular situation, undocumented or unauthorized, they have not committed a criminal act. A human being cannot be intrinsically illegal, and naming anyone as such dehumanizes that person. Characterizing undocumented migrants as illegal has undoubtedly legitimized policies that contradict human rights guarantees, such as criminalization and prolonged detention. It has also had an impact on the general public's perception of migrants and contributed to xenophobia, discrimination and violence.

72. A fundamental shift in how migration is framed is thus required, in both actions and words. Many of the intersecting and negative perceptions of migrants and migration that have pervaded public debates, policies and politics must be challenged. Appropriate language, precise data and policies that promote respect and acceptance of cultural diversity will favour the inclusion of migrants, facilitate their integration and increase their contribution to development.

73. Mobility and diversity create complex issues that require sophisticated policies, a long-term vision, targeted investments and nuanced discourses. Until now, with a few exceptions, these requirements have not been met even though strong integration policies, efficient equality and anti-discrimination mechanisms, vigorous countering of hate speech, access to justice for all and the promotion of diversity at all levels are urgently needed in order to ensure that migrants become active citizens.

Targets

7.1. Monitor inequalities and discrimination against migrants by establishing and enforcing a policy-specific time frame for the reduction of such acts in laws, policies and practices

7.2. Prohibit by law acts of violence and manifestations and expressions of racism, discrimination, xenophobia and related intolerance against migrants to ensure the protection of migrants and guarantee their access to means of recourse, redress and remedies

7.3. Establish at all levels of government, including municipal authorities, inclusive institutions, policies and practices that recognize and value all forms of diversity

7.4. Incorporate diversity, whether of origin, transit or destination, into the national narrative of all countries

7.5. Develop and implement campaigns at the national and global levels to counter xenophobia, discrimination, racism and violence against all migrants

Indicators

(a) Decreased number and proportion of migrants who are victims of xenophobic crime, including bias-driven violence;

(b) Inclusive institutions, policies and practices are in place at all levels of government, including the municipal level, to promote diversity, pluralism and multiculturalism as essential features of contemporary societies;

(c) Increased number of migrants who are granted remedies in compensation for discrimination, hate speech or violence;

(d) Significant investment is made in mechanisms for providing information and education on a culture of diversity, the focus of which is to create awareness of the cultural, social and economic contributions of migrants, support the reintegration of migrants and their families into their countries of origin, empower marginalized groups, including migrants, in the social, political and economic fields, and empower migrants to combat all forms of discrimination, labour exploitation, abuse, xenophobia, violence and related intolerance.

Goal 8. Increase the collection and analysis of disaggregated data on migration and mobility

Rationale

74. States must increase the harmonization and coordination of the collection and analysis of migration data sources in order to develop a systemic picture. They must provide for inclusive processes that allow for a robust public debate, including through national consultations, and that promote a better understanding of the needs of migrants in terms of human and labour rights protection. This will allow States to develop more targeted programmes and more suitable mobility options and to measure effective progress for migrants, especially those who are socially marginalized, economically excluded and politically invisible. Such processes and data collection will constitute an important contribution to the 2030 Agenda for Sustainable Development.

75. In order for meaningful national plans, policies and programmes to be developed and implemented, States must focus on collecting and assessing data on the human rights situation of migrants, from sources such as censuses, population, labour force and household surveys, administrative records, public services, the justice system, national human rights institutions, trade unions and civil society organizations. The participation of hard-to-count migrant populations, such as short-term, circular, undocumented and child migrants and trafficked persons, in the design of surveys and other data collection instruments and in the dissemination and analysis of data will improve the relevance and quality of data.

76. Data collection should be focused on the human rights aspects of migration and preferably be disaggregated by all prohibited grounds of discrimination, including by income, urban or rural area, sex, age, disability, nationality, sector of employment and legal status. Disaggregation by itself, however, does not automatically result in the reduction of inequalities. It is the action of policymakers in response to the information revealed by disaggregation that can result in the required change, which must then be reflected when setting targets and indicators.

77. Migration governance institutions should be able to ensure that the data, including the identities of those who participated in the production thereof, are protected and kept confidential. The right of migrants to privacy needs as much protection as that of citizens.

Targets

8.1. Collect disaggregated data and indicators in all areas relevant to migration, while ensuring data protection and respect for the right of migrants to privacy, in particular by establishing firewalls in order to enable societies to conduct better-informed public debates and States to make evidence-based policy decisions

Indicators

(a) Capacity-building for the collection, dissemination and use of disaggregated data on the situation of migrants;

(b) Promoting the availability of gender-disaggregated data to improve gender equality policies, including gender-sensitive budgeting, in particular with regard to marginalized groups, including migrants;

(c) Disaggregated data showing the proportion of migrants who have reported cases of violations of their rights, including forced labour, discrimination and violence, and the proportion of victims who received compensation is made available and more precise.

E. Assessment of progress and financing

78. Implementing the 2035 agenda for facilitating human mobility would require an explicit whole-of-government approach by each State, cooperation among all levels of government, including municipal authorities, and a global collaboration among all States to fulfil their duties and responsibilities, as well as a global partnership between States and other key stakeholders, such as the business community, trade unions, civil society and migrant associations. The progress in the implementation thereof would be monitored and reported by States periodically at the national, regional and global levels.

79. Systematic follow-up and review at the global level would be conducted during the General Assembly High-Level Dialogues on International Migration and Development to ensure that the implementation of the agenda stays on course. Given that the Millennium Development Goals were followed by the more ambitious Sustainable Development Goals, the 2035 agenda would also be expected to pave the way for a more ambitious agenda in order to make a meaningful and progressive impact on the lives of future generations.

80. In order to facilitate the implementation of the agenda by States, the Special Rapporteur also supports the proposal made in the report of the Special Representative of the Secretary-General on Migration (A/71/728) with regard to financing through a collective fund. As stated in paragraph 34 of the present report, similar long-term strategies exist for the environment, trade and energy. Similarly, as outlined in the report of the Special Representative, a dedicated financing facility would be needed to support capacity development for the implementation of migration-related international commitments. The Special Rapporteur welcomes the opening of the Sustainable Development Goals Financing Lab, which is aimed at mobilizing the resources needed to support the world's long-term sustainable development objectives, including in relation to migration.[11]

F. Conclusions and recommendations

81. Migration is here to stay. The inclusion of migration in the Sustainable Development Goals demonstrated the importance of migration today and the commitment of States to addressing it. The unprecedented number of undocumented cross-border movements has resulted in increased deaths, violence and suffering at borders and at every stage of the migratory process over the past few years. Such events have clearly shown that the status quo in the approaches of States to border control and migration is not sustainable if the objective is to reduce suffering and deaths. They have also underlined the increasing importance of migration. In the high-level plenary meeting on addressing large movements of refugees and migrants and its outcome document, the New York Declaration, migration was firmly established as a priority issue within the United Nations system, and the need of States to commit to the protection of the human rights of migrants and improved global migration governance was acknowledged.

[11] See www.un.org/pga/71/2017/04/18/opening-of-sdg-financing-lab/.

82. The global compact for safe, orderly and regular migration offers an opportunity for better migration governance that enables States to develop clear, long-term and evidence-based migration policies ensuring full protection of the human rights of all migrants.

83. The Special Rapporteur considers the global compact for safe, orderly and regular migration, which is to be presented for adoption in 2018, as the beginning of a long-term, 15-year agenda, complementary to the 2030 Agenda for Sustainable Development and aimed primarily at implementing targets 10.7 and 8.8 of the Sustainable Development Goals. The objective is to provide States with short-, medium- and long-term achievable goals and targets aimed at facilitating migration and mobility and protecting the human and labour rights of migrants, as requested in the 2030 Agenda.

84. The long-term strategy would start in 2020, which could be designated as the "International year for safe, orderly and regular migration for all". The strategy could be called the "2035 agenda for facilitating human mobility". The Special Rapporteur recommends the adoption of eight practical and achievable goals, with appropriate targets and indicators, as his contribution to the 2035 agenda. He acknowledges that these goals and targets could be further refined and must be developed in full recognition of the challenges that States are facing in their endeavour to establish a global framework for rights-based global migration governance.

85. The Special Rapporteur recommends a consultative process led by the United Nations to further develop goals and targets. Such a process would include the participation of experts, the business community, civil society organizations and migrants themselves. It would build upon the principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations within large and/or mixed movements developed by the Global Migration Group. The guidance could form an important starting point for the development of goals and targets, given that it is derived from existing obligations under international law and is aimed at assisting States and other stakeholders with regard to the refinement, strengthening, implementation and monitoring of measures to protect migrants in vulnerable situations.

86. The Special Rapporteur proposes that States also develop inclusive processes so as to allow for national consultations that foster better understanding of and adaptation to each goal, target and indicator, according to national contexts, taking into account and carrying the voice of migrants in particular.

87. A longer-term strategy will require long-term investment in order to ensure the effective implementation and monitoring of all eight goals. The implementation of such an agenda within the framework of the United Nations would require the existing bilateral, regional and global cooperation mechanisms to be strengthened. This would ensure accountability, monitoring and oversight, while creating a clear link to the formal normative monitoring mechanisms established within the United Nations.

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Report of the Special Rapporteur on the human rights of migrants on his mission to Angola

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights of migrants, François Crépeau, on his mission to Angola from 3 to 10 May 2016. He held consultations with officials of the Government of Angola, migrants, civil society organizations and international organizations.

The Special Rapporteur recommends that Angola develop a comprehensive national migration and mobility strategy and bilateral and multilateral mobility agreements with neighbouring countries in order to protect and promote the human rights of all migrants in the country.

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Report of the Special Rapporteur on the human rights of migrants on his mission to Angola*

Contents

		Page
I.	Introduction	3
II.	General background on Angola and migration: a brief overview	3
III.	Normative and institutional framework on migration and border management	4
	A. International legal framework	4
	B. Regional framework and institutions	5
	C. Trade and mobility agreements	6
	D. National legal, institutional and policy framework	7
IV.	Border management	9
	A. An unnecessarily harsh asylum policy	9
	B. Documentation and birth registration	10
	C. Intimidation or harassment by law enforcement officials	11
	D. Collective expulsions	11
	E. Bilateral agreements	12
V.	Detention	12
VI.	Cross-cutting concerns	13
	A. Labour exploitation	13
	B. Xenophobic and discriminatory acts	13
	C. Access to justice	13
VII.	Conclusions and recommendations	14
	A. Normative and institutional framework for the protection of the human rights of migrants	14
	B. Border management	15
	C. Detention	16
	D. Access to justice	16
	E. Cross-cutting concerns	17

* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the human rights of migrants, François Crépeau, conducted an official visit to Angola from 3 to 10 May 2016. The visit was undertaken to assess the migration laws, policies, programmes and practices developed by the Angola authorities in recent years. Furthermore, he was particularly interested in learning how Angola implements the mobility provisions contained in its multilateral and bilateral trade agreements, as his thematic report to the Human Rights Council (A/HRC/32/40) specifically addressed the topic of bilateral and multilateral trade agreements and the mobility agreements provided therein.

2. During his eight-day visit to Angola, the Special Rapporteur met with a range of government officials, representatives of civil society and international organizations and migrants themselves to discuss migration governance in Angola.

3. The Special Rapporteur held meetings in Luanda, Cabinda and Lunda Norte and visited detention centres in each province.

4. The Special Rapporteur expresses his appreciation to the Government of Angola for the support provided throughout the visit.

II. General background on Angola and migration: a brief overview

5. Angola sits on the west coast of south-central Africa. Its history and economic outlook are largely shaped by a 14-year war for independence from Portugal, which it achieved on 11 November 1974, followed by an intermittent 27-year civil war in which the country experienced mass migration and forced internal displacement until 2002.

6. Angola receives a very high number of irregular migrants and asylum seekers from West Africa in general and the Democratic Republic of the Congo in particular, drawn by natural resources, economic growth, political stability and porous borders. The migration population in Angola has more than doubled since 2000. A presumably high percentage of those migrants are attracted to work in informal artisanal diamond mining in border provinces, mainly in Lunda Norte, Lunda Sul and Zaire. Historically, there has always been a considerable amount of contact and cross-border activity between Angola and the Democratic Republic of the Congo due to the long and porous border between the two countries, some of which is in diamond exploration areas.

7. The most recent figures from the United Nations on the number of recorded migrants indicate that Angola has 33,517 international migrants. That figure includes estimates of the foreign-born population and the number of refugees, as reported by the Office of the United Nations High Commissioner for Refugees (UNHCR), which were added to the estimate of international migrants in Angola. The majority of international migrants come from the Democratic Republic of the Congo (12,178), Portugal (5,298), Cape Verde (3,569), Sao Tome and Principe (3,112) and South Africa (2,437).[1] The Special Rapporteur observes that that figure does not include asylum seekers and irregular migrants who are currently present in Angola. In April 2017, the Government of Angola provided updated figures indicating that there 200,000 foreigners in Angola, most of whom are Chinese or Portuguese. Of that number, 30,143 are asylum seekers of various nationalities, mostly from Guinea. There are currently 16,190 refugees.

8. The Special Rapporteur received information indicating that irregular migration is considered a serious threat to national security and the economy, especially in the diamond areas. The Government of Angola is therefore increasing its efforts to improve border control along the extremely long and porous borders. That is reflected in public statements

[1] See United Nations, Department of Economic and Social Affairs (2015), "Trends in international migrant stock: migrants by destination and origin" (POP/DB/MIG/Stock/Rev.2015). Available from www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.shtml.

and in the media, which influences citizens' perception of migration. That all has a negative effect on the authorities' response to the phenomenon, as aggressive rhetoric promotes heavy-handed security enforcement and dehumanizes migrants.

9. In recent years, mass expulsions have been accompanied by allegations of human rights violations by Angolan security forces against migrants expelled from Angola, the majority of whom were Congolese. The Special Rapporteur received reports that often, the situations of people in need of international protection were not taken into account during collective expulsions. Allegations of human rights violations, including sexual abuse and sexual exploitation, were also reported.

10. Moreover, the challenges associated with migration management in Angola are particularly important in the diamond-mining areas bordering the Democratic Republic of the Congo. Information received from the Government indicates that such challenges are also experienced in other border areas, such as Santa Clara (between the province of Cunene and Namibia), Cabinda, an Angolan enclave bordered on all sides by the Congo, and in Moxico, on the border with Zambia. In recent years, clandestine migration has also developed using small boats from the west coast of Africa and the Gulf of Guinea to cross the Atlantic Ocean.

11. Excessive bureaucracy and petty corruption have disproportionate effects on human rights protection, as they limit the access of irregular migrants to social services such as education, health care and justice, for fear of detection, detention, extortion and deportation. The Special Rapporteur was informed that they also discourage migrants from attempting to enter the country regularly or trying to regularize their migration status once they are in Angola.

12. The Special Rapporteur observed that the immigration rules are not well known by law enforcement officials and, when they are, their implementation is hampered by the lack of proper institutional structures and by corruption. The overly stringent immigration rules often make being undocumented the only option for many migrants. Still, migrants continue to go to Angola to work, often in the construction and mining industries, and set up businesses, all of which contribute significantly to the economy. However, their status is rarely regularized and they face exploitative conditions of work.

III. Normative and institutional framework on migration and border management

A. International legal framework

13. Angola has ratified five of the nine core international human treaties.[1] It has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

14. Angola has made several reservations to the 1951 Convention relating to the Status of Refugees, the most significant of which were to articles 17, on the right to work, and 26, on freedom of movement.[2]

[1] It has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

[2] The text of the reservation to article 17 reads: "The Government of the People's Republic of Angola accepts the obligations set forth in article 17, provided that: (a) Paragraph 1 of this article shall not be interpreted to mean that refugees must enjoy the same privileges as may be accorded to nationals of countries with which the People's Republic of Angola has signed special co-operation agreements. (b) Paragraph 2 of this article shall be construed as a recommendation and not as an obligation." The text of the reservation to article 26 reads: "The Government of the People's Republic of Angola reserves the right to prescribe, transfer or circumscribe the place of residence of certain refugees or

15. Angola has not signed the International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) or the Domestic Workers Convention, 2011 (No. 189).

B. Regional framework and institutions

16. Angola acceded to the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa in 1981. It acceded to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) in 2013.

17. Angola is a party to the African Charter on Human and Peoples' Rights. In November 2007, the African Commission on Human and Peoples' Rights adopted resolution 114 on migration and human rights,[8] which recommends that member States:

(a) Recognize the importance of the human rights of all migrants, including refugees and internally displaced persons, and ensure that national legislation relating to migration issues is consistent with and does not conflict with international human rights standards and conventions;

(b) That have not done so ratify and implement the main regional and international instruments relating to migrants and refugees, in particular the Convention relating to the Status of Refugees, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa; implement the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto, which provides for the submission of individual communications, in order to respect the rights of migrant women;

(c) Respect the customary international law principle of non-refoulement; make legal requirements for entering a territory more flexible, in order to take into account the needs of asylum seekers; revoke the notion of "safe third country"; strengthen institutional structures for addressing and managing individual asylum requests; respect the right of asylum seekers to contest rulings on asylum status; and improve the reception structures and processes for refugees seeking asylum.

African Commission on Human and Peoples' Rights

18. In 2008, the issue of mass expulsions of foreigners was addressed by the African Commission on Human and Peoples' Rights in the *Institute for Human Rights and Development in Africa v. Angola* case. While the case was brought by 14 Gambian citizens, the Commission made some important general observations about the human rights implications of the mass expulsion of foreigners from Angola, and noted that the majority of those affected were from the Democratic Republic of the Congo.[9] In examining the case, the Commission found that Angola was in breach of article 12 (5) of the African Charter on Human and Peoples' Rights, which prohibits mass expulsions. Moreover, the Commission held that the Government of Angola had also violated the principle of non-discrimination (art. 2) as the expulsions were carried out in a way that targeted foreign nationals. Furthermore, the Commission found Angola to be in breach of a number of provisions regarding due process of law, including articles 6, 7 (1) (a) and 12 (4), as the migrants

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groups of refugees, and to restrict their freedom of movement, whenever considerations of national or international order make it advisable to do so." Available from https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en#EndDec.

[8] See www.achpr.org/sessions/42nd/resolutions/114/.

[9] *Institute for Human Rights and Development in Africa v. Angola* (2008) AHRLR 43 (ACHPR 2008). Available from www.ihrda.org.za/entries/jbg/resource/by-country-angola/198-angola-institute-for-human-rights-and-development-in-africa-v-angola-2008-ahrlr-achpr-2008.html, para. 67.

concerned were arbitrarily arrested, not afforded a right of appeal and were expelled from Angola in violation of the principle that deportation may only occur by virtue of a decision taken in accordance with the law. The Commission also found that the conditions of detention and the mistreatment by guards were in breach of article 5 of the African Charter, which protects the dignity of the person, and prohibits torture and cruel, inhuman and degrading punishment. One of the recommendations of the Commission was that Angola establish a commission of inquiry to investigate the circumstances under which the victims were expelled and ensure payment of adequate compensation to all those whose rights were violated in the process.[6]

19. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) was ratified by Angola on 30 August 2007. Article 10 (2) (b) requires that the local, national, regional, continental and international decision-making structures ensure the physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, particularly women.

C. Trade and mobility agreements

1. Multilateral agreements

20. Angola joined the World Trade Organization (WTO) in November 1996 and grants most-favoured-nation treatment to all its trading partners. Angola has undertaken General Agreement on Trade in Services commitments in banking, tourism and recreational, cultural and sporting services. While actively participating in the Trade Facilitation Agreement negotiations, Angola has not yet ratified the Agreement.[7] Under the Global System of Trade Preferences among Developing Countries, Angola has conducted negotiations with Mozambique and Cuba.

2. Regional agreements

Community of Portuguese-speaking Countries (Comunidade dos Países de Língua Portuguesa)

21. The Community of Portuguese-speaking Countries is a multilateral organization founded in 1996, which consists of nine member States: Angola, Brazil, Cabo Verde, Equatorial Guinea, Guinea-Bissau, Mozambique, Portugal, Sao Tome and Principe and Timor-Leste. Initially, the community focused on deepening cultural engagement between member States, but it has since expanded to become a geopolitical and economic community, as it represents the fourth largest oil-producing region in the world.[8] In 2013, consensus was achieved among all the member States on the free movement of goods and people.[9] However, the community has to coordinate between existing cooperation agreements with the Southern African Development Community, the European Union and other regional blocs. In February 2016, it appeared that plans were under way for the administrative facilitation of movement, focused upon businesspersons and students.[10]

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[6] Ibid., para. 87.

[7] Adopted by the WTO General Council in 2014, the Trade Facilitation Agreement integrates good trade practices from around the world towards moving goods expeditiously across borders. The Agreement marked the first time in WTO history that trade commitments for least developed and developing countries were linked to States' capacity to implement those commitments.

[8] Rita Himmel, DW,"CPLP é o quarto maior produtor de petróleo do mundo", 22 July 2014. Available from www.dw.com/pt/cplp-%C3%A9-o-quarto-maior-produtor-de-petr%C3%B3leo-do-mundo/a-17798873.

[9] Macauhub, "Movement of people and goods in CPLP 'has consensus' of all member countries", 18 July 2013. Available from https://macauhub.com.mo/2013/07/18/movement-of-people-and-goods-in-cplp-has-consensus-of-all-member-countries/.

[10] Adrian Frey, "CPLP visas: Portugal pushes for administrative facilitation to ease doing business", 24 February 2016. Available from http://clubofmozambique.com/news/cplp-portugal-expects-administrative-easing-of-visas/.

Economic Community of Central African States

22. The Economic Community of Central African States (ECCAS) entered into force in 1985 and Angola formally joined the group in 1999. The current members of ECCAS are Angola, Burundi, Cameroon, the Central African Republic, Chad, the Congo, the Democratic Republic of the Congo, Equatorial Guinea, Gabon, Rwanda and Sao Tome and Principe.

23. Mobility in ECCAS is governed by the Protocol on Freedom of Movement and Rights of Establishment of Nationals of Members States (annex 7 to the original treaty), which details ECCAS citizens' rights relating to the freedom of movement, residence and establishment.[11] Nationals of ECCAS member States have the right to enter the territory of other member States providing they possess an identity card or passport for their State of origin and a visa. Under the treaty terms, ECCAS nationals also have the right to reside within the territory of another member State, providing they possess a sojourn card. The treaty and the protocol also allow for the mobility of workers and the establishment of self-employed persons, although limitations exist under the national legislation and the regulations of each member State.

24. While the arrangements for the free mobility of ECCAS citizens and the right of establishment were to be implemented within 4 to 12 years of the treaty's entry into force, discussions relating to free mobility are still ongoing as the issue has not been considered a priority among ECCAS member States. Additionally, neither the treaty nor the protocol contain specific mobility provisions relating to non-citizens. However, mobility provisions for non-citizens may be found within certain bilateral free movement agreements between ECCAS member States and third States.

3. Bilateral agreements between Angola and other countries involving mobility

25. Angola has signed trade agreements with Benin (2012), the Central African Republic (2010), Equatorial Guinea (2007), the Philippines (2013), South Africa (2009), Turkey (2009) and the United States of America (2009). It had bilateral agreements with 38 other countries, one of which is the economic partnership with Namibia into which it entered in 2009, allowing for the free movement of people between the two countries.

D. National legal, institutional and policy framework

1. Legal framework

Constitution

26. The Constitution of the Republic of Angola of 2010 guarantees all fundamental freedoms and rights, enshrines the principle of equality and discrimination, and contains fundamental rights by reference to the Universal Declaration of Human Rights, the African Charter of Human and Peoples' Rights and international treaties ratified by Angola.

27. Article 71 of the Angolan Constitution provides for the right to obtain asylum against political persecution.

Legislation

28. Law No. 6 (1986)[12] approves the statute of the resident foreign worker. The law applies to foreign workers resident in Angola and hired there. Its provisions are not applicable to those recruited abroad or to foreign workers who lack professional qualifications and technical or scientific qualifications. It establishes equality of treatment between foreign workers and Angolans in health care, security against accidents at work and retirement pensions, as well as for the fixing of wages and the payment of income tax.

[11] See www.ceeac-eccas.org/images/traites/trt_eccas.pdf.

[12] See www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=2114&p_country=AGO&p_count=196&p_classification=17&p_classcount=8.

29. Presidential Decree No. 11 (1986)[13] approves the regulations for the recruitment of resident foreign workers, as well as the model contract.

30. Presidential Decree No. 5/95 (1995)[14] focuses on the employment of non-resident foreign workers. Its purpose is to regulate the employment of the non-resident foreign labour force as well as the qualified national labour force working for foreign companies and other employing entities that perform their activities in the territory of Angola. The law has since been revoked and replaced by Presidential Decree No. 43/17 of 6 March 2017, which introduced a strict maximum quota of 30 per cent of foreign employees, although the minimum number of five national employees to enable the hiring of foreign citizens was eliminated.

31. Presidential Decree No. 108/11 of 25 May 2011 sets out the mandate of the Migration and Foreigners Service and the laws governing the entry and exit of foreigners from the national territory, as well as the documents necessary to obtain, extend and process diplomatic, official, courtesy, consular and territorial visas.

32. Law No. 02/07 on the Legal Regime of Foreign Citizens (Lei sobre o Regime Jurídico dos Estrangeiros na República de Angola) entered into force on 31 August 2007 and guarantees foreign nationals in Angola the same rights and duties enjoyed by Angolan citizens, with the exception of some specific rights, such as political rights and the exercise of public functions or the leadership of trade unions or professional associations. The law allows for expulsions of foreign citizens without prejudice to agreements or international conventions to which Angola is a party. Presidential Decree No. 108/11 of 25 May 2011 regulates the implementation of Law No. 02/07.

33. Article 29 (4) of the Law on the Legal Regime of Foreign Citizens provides safeguards against the expulsion of refugees to countries where they might be persecuted for political, racial or religious reasons, or where their lives might be in danger. Article 29 (3) guarantees refugees the most favourable treatment under the law or international agreements to which Angola is party.

34. Through its reservation to article 26 of the 1951 Convention relating to the Status of Refugees, Angola reserves the right to prescribe, transfer or circumscribe the place of residence of certain refugees or groups of refugees, and to restrict their freedom of movement, whenever considerations of national or international order make it advisable to do so. The limitation on freedom of movement for security reasons is also enshrined in article 5 of the Law on the Legal Regime of Foreign Citizens and requires them to obtain a permit in order to move to restricted areas.

35. Regulation No. 273/13 on the granting and use of the business licence (alvará commercial) prohibits refugees from owning or operating a business,[15] even when they fulfil all of the requirements and despite the fact that other foreigners do not face the same restrictions. The business licence is a prerequisite to owning and operating a business in Angola.

36. The Law on Refugee Status (No. 10/2015) further curtails the freedom of movement for asylum seekers. It moves the administration of the asylum process to the Ministry of the Interior. It prohibits the expulsion of refugees and asylum seekers from Angola, except for reasons of national security or public order, for having committed fraud resulting in the recognition of refugee status or for having committed an excludable act. It states that asylum seekers and vulnerable refugees must reside in a reception centre (centro de acolhimento de refugiados e requerentes de asilo), unless they can demonstrate that they are

[13] See www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=2779&p_country=AGO&p_count=196&p_classification=17&p_classcount=8.

[14] See www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=56291&p_country=AGO&p_count=196&p_classification=17&p_classcount=8.

[15] Art. 4 (4) of Regulation No. 273/13 prohibits the granting of a business licence to individuals who have refugee or asylum status ("É vedada a concessão de Alvará Comercial a cidadãos titulares do estatuto de refugiado ou exilado, nos termos da legislação em vigor na República de Angola").

able to cater for their own needs. It prohibits asylum seekers from carrying out wage-earning employment.

2. Relevant government agencies

37. The Ministry of the Interior is the body of the central State administration that generally promotes, according to governmental guidelines, the formulation, coordination and implementation of law, order and internal security: it controls the entry, stay, exit and residence of foreigners, the implementation of custodial measures, and the guarantee of the exercise of fundamental rights and freedoms. The Ministry of the Interior includes civilian and military personnel.

38. The Migration and Foreigners Service is based in the Ministry of the Interior and is responsible for promoting and coordinating the implementation of measures and actions inherent in the transit, entry, stay, residence and exit of people across land borders, sea, air and waterways throughout the country. The Migration and Foreigners Service is also responsible for receiving asylum requests and conducting confidential interviews with applicants. Following the initial procedure, asylum claims are sent to the National Council for Refugees, an interministerial committee responsible for assessing asylum cases and conducting refugee status determination. However, almost one year after the adoption of the new Law on Refugee Status, the National Council for Refugees has yet to be established and refugee status determination has been suspended. In addition, from the wording of article 3 (g) of the Law on Refugee Status, it is unclear whether UNHCR will maintain its observer role once the Council has been created.

39. The Constitution of Angola 2010 (art. 192 (71)-(74)) provides that the Ombudsman (Provedor de Justiça) be appointed by a two-thirds majority of the National Assembly and be sworn in by the president of the National Assembly. The Ombudsman is appointed for a four-year term and may be reappointed for another four years. The position and Office of the Ombudsman were established in 2005, following the adoption by the National Assembly of the Statute of the Judicial Ombudsman and the Organic Law establishing the Office of the Ombudsman.

40. The Ombudsman cannot take matters directly to court and can address some issues only with the President's approval. The Office is authorized to respond only to officially submitted complaints, except in cases of flagrant human rights violations, in which case no official complaint is required. The Ombudsman has the authority to make recommendations and suggest corrective measures, but he does not have the power to annul, revoke or modify the powers of any public entity. In 2005, the National Assembly appointed the first Ombudsman, Paul Tjipilika, a former Minister of Justice. He enjoys the status of a government minister. The Ombudsman's reports are presented to the parliament.

IV. Border management

A. An unnecessarily harsh asylum policy

41. Since the promulgation of the new Asylum Law No. 10/15 of June 2015, the previous system for refugee status determination has been discontinued. The regulation necessary for the establishment of a new refugee status determination system has yet to be adopted. The resulting legal gap has existed since June 2015 and is extremely prejudicial to asylum seekers, who are provided with no alternative status and no documentation. That should be urgently remedied. The Special Rapporteur was informed by the Government that the main reason for that legal gap is financial constraints; it is urgently looking to address that gap.

42. The 2015 Asylum Law provides for new identification documents for refugees and asylum seekers[16]. However, the regulation introducing the new identity documents has not

[16] The law on the right to asylum and refugee status, art. 35, reads: "A refugee has the right, under the

been finalized and the Migration and Foreigners Service has suspended issuance of documentation for those who have applied for asylum since the entry into force of the new Law. The right to work is not recognized for asylum seekers. As a result, they have no choice but to engage in informal labour for their basic subsistence. In addition, since the adoption of Regulation No. 273/13 in August 2013 prohibiting the grating of the mandatory business licence to refugees, their means of becoming economically self-sufficient has been restricted, impeding them from finding durable solutions. The authorities must take the necessary steps to ensure that asylum seekers have easy access to the labour market and must remove the discriminatory provisions that prohibit refugees from owning and operating businesses.

43. The complicated and lengthy asylum procedure, the restrictions on the freedom of movement, the lack of availability of the required documentation and the denial of the right to work or set up a business encourage many potential refugees not to register as asylum seekers. That may result in violations of the principle of non-refoulement.

44. The central aim of the 2015 Asylum Law is to prevent the abusive use of the asylum process by those who wish to enter the country by deceitful means. It thus introduces a policy of mandatory detention for asylum seekers, which violates the international law principle according to which detention should always be a measure of last resort, individually justified, and for the shortest possible duration. Crucially, it deters refugees from seeking international protection in order to avoid detention.

45. Through its reservation to article 26 of the 1951 Convention, and as enshrined in article 5 of the Law on the Legal Regime of Foreign Citizens, Angola reserves the right to restrict the freedom of movement of foreigners, for considerations of national or international order. The 2015 Asylum Law further curtails the freedom of movement of asylum seekers. Even for asylum seekers who have the required documents, there is a practice of restricting their freedom of movement within Angola.[17] The Special Rapporteur was informed that in practice, while refugees and asylum seekers are not under an obligatory encampment policy, the reservation means that refugees are prohibited from settling in or having access to areas of particular economic interest, such as the diamond mining areas. Freedom of movement could further be impeded by lack of documentation. Even for asylum seekers who have the required documents, the Migration and Foreigners Service has developed a practice of restricting their freedom of movement if they intend to travel to other provinces in Angola.

B. Documentation and birth registration

46. A large number of asylum seekers and many refugees living in Angola, particularly those residing outside Luanda, are still undocumented. Many police and immigration officers are unaware or suspicious of undocumented aliens, and asylum seekers may face detention even if they present an attestation proving that their asylum application is pending before the Migration and Foreigners Service. In addition, due to the poor quality of the documentation for refugees and asylum seekers, they often have difficulties accessing public services and employment, hampering their efforts towards local integration and self-reliance. The poor quality has also led to many cases of falsifications of refugee cards and asylum seekers' certificates, and the police have in turn adopted a regular practice of arresting and detaining foreigners until the veracity of their documentation can be confirmed. That creates significant protection risks for asylum seekers and refugees who may be reluctant to approach government authorities for fear of arrest and detention.

1951 Convention, to be issued by the migration authority with an identification document certifying his or her status, with high security features, in line with the model adopted by way of regulation". See also art. 11: "and issues in favour of the asylum seeker a declaration certifying his or her application for asylum, in accordance with the model approved by regulation."

[17] Under the previous law, the Immigration Services would issue a travel document (guia de marcha) authorizing the asylum seeker to travel from the province of residency to the province of intended destination.

47. In 2012, the Migration and Foreigners Service, with the support of UNHCR, initiated a nationwide registration campaign for refugees and asylum seekers. Full registration would have been instrumental in enhancing the protection of refugees and asylum seekers in the country. However, due to technical problems, the registration efforts were suspended. Consequently, data on asylum seekers and refugees also remains unavailable.

48. The new identification documents for refugees and asylum seekers provided for under the 2015 Asylum Law should include higher security features and therefore reduce the risks of detention. However, given that the Ministry of the Interior had not finalized the regulation introducing the new identification documents and the Migration and Foreigners Service had suspended issuance of identification documents for those who had applied for asylum since the entry into force of Law 10/15, at the time of the Special Rapporteur's visit, refugees and asylum seekers could not obtain any identification documents whatsoever.

49. The Special Rapporteur was informed that refugees and asylum seekers are not covered by Presidential Decree No 80/13 of 5 September 2013, under which late birth registration for children over the age of 5 is now free of charge for Angolan nationals. Furthermore, pursuant to an administrative instruction issued by the Ministry of Justice (Circular de Execução Permanente) issued in May 2011, issuance of birth certificates to children born of foreigners, including children of refugees and asylum seekers, has been suspended until the adoption of the new nationality law. Consequently, many foreigners have been unable to register their children and obtain birth certificates, depriving them from access to a wide range of rights. Moreover, when they are provided, the birth certificates indicate that the parents are foreigners, and many employers, civil servants and other service providers are using that information to discriminate against migrants.

50. Access to a legal identity is a fundamental right. Birth registration is essential in order to protect migrant children and prevent statelessness. Failure to document a person's legal existence prevents the effective enjoyment of a wide range of human rights, including access to education and health care.

C. Intimidation or harassment by law enforcement officials

51. The Special Rapporteur was informed that undocumented migrants, asylum seekers and refugees are often victims of harassment and intimidation by police officers. Additionally, the police carry out operations in artisanal diamond mines, informal markets, residential areas, shops, streets, churches and mosques, in search of undocumented migrants, often going door to door. Those operations are often marred by violence, threats, intimidation, extortion and the destruction of valid identity documentation. Furthermore, migrants and asylum seekers, including pregnant women and children, are regularly arrested and detained in large numbers without access to legal information or assistance, and police officers use those occasions as an opportunity to extort bribes from undocumented migrants. Those who defend the rights of undocumented migrants have also been intimidated by the police.

D. Collective expulsions

52. The Special Rapporteur was concerned about the impact of collective expulsions of undocumented migrants. He was informed that, at the border with the Democratic Republic of the Congo, in Dondo, deportations are often implemented on the day of arrest. That does not give migrants an opportunity to apply for a judicial remedy.

53. Of particular concern is the impact that has on the commitment of Angola to the principle of non-refoulement of asylum seekers and refugees. Articles 54 and 3 (z) of the Law on Refugee Status prohibits the expulsion of refugees and asylum seekers from Angola, except for reasons of national security or public order, for having committed a fraud that resulted in the recognition of refugee status or for having committed an excludable act. In spite of that, the Special Rapporteur remains concerned that the principle

of non-refoulement is being eroded, considering the sharp increase in immigration arrests of migrants and refugees, and the difficulties they experience in gaining access, once detained, to legal representation, civil society organizations or international organizations. The Special Rapporteur urges the Government to implement oversight mechanisms that will allow it to ensure the fulfilment of the principle of non-refoulement.

E. Bilateral agreements

54. The Special Rapporteur commends Angola for having joined the Community of Portuguese-speaking Countries and can see the benefits of advancing in that Community. The Special Rapporteur observes that it is important to have additional arrangements that ensure that the preference for "highly skilled" labour is not implemented to the detriment of the human rights of "low-wage" migrant workers.

V. Detention

55. Migrants are arrested under suspicion of irregular entry or stay, often in spite of the documents presented, and, if necessary, taken to a detention centre while their documents are verified or arrangements relative to their expulsion are being finalized.

56. Mandatory detention of undocumented migrants and asylum seekers is neither a legitimate nor an effective tool for deterring undocumented migration and instead has the opposite effect of driving them further underground.

57. The Special Rapporteur expresses his regret that, on the day that he visited the detention centre in Cabinda, there were no migrants present and he was therefore unable to make a proper assessment of how the detention centre works. The Special Rapporteur was informed by government officials that migrants are kept there for only up to 12 hours. In the Trinta detention centre, the Special Rapporteur met with only five detainees, when the capacity is of over 500. He was informed that many migrant detainees had been released prior to his visit.

58. The Special Rapporteur was informed that arrested migrants may be subjected to harsh, overcrowded and unsanitary detention conditions. There is little access to basic hygiene products such as soap or sanitary napkins. Detainees have little privacy and seem to be allowed access to telephones only in order to obtain bribery money from family and friends. Crucially, they do not have access to justice. They receive little legal information, have difficulty accessing lawyers and have no access to legal aid. Detention is indefinite and ends only upon the expulsion of the undocumented migrant, the verification of documentation, which is a lengthy process, or release after payment of a bribe.

59. In the Trinta detention centre, detainees are kept in large groups in different rooms, one of which is allocated for women only. Movement out of the rooms is restricted to meal times. Young children are kept with their mother and older male children are kept with the men. Additionally, detainees suffer from harassment, degrading treatment and physical violence and lawyers trying to defend migrants are occasionally intimidated.

60. The detention of migrants is not subject to independent monitoring and takes place without prior authorization from a judicial body. Investigations conducted by the Attorney General to review the legality of detention are usually extremely lengthy. Furthermore, detainees are sometimes denied contact with the outside world, including legal assistance.

61. The Special Rapporteur received information that children are being detained. As stated by the Committee on the Rights of the Child, children should always be treated as children first and foremost, and the principle of the best interests of the child should always guide all decisions regarding children, whatever their administrative status and circumstances. Detention can never be in the best interest of a child and children should never be detained for reasons relating to their migratory status or that of their parents. Children and families with children should always benefit from alternatives to detention.

VI. Cross-cutting concerns

A. Labour exploitation

62. The Special Rapporteur was informed about the deplorable working conditions in the artisanal diamond mining sector. Migrants working in that sector are often exploited by their employers. Due to the informal nature of the work, the remoteness of the mines and resource constraints, the Government is unable to monitor and protect migrant workers from exploitation.

63. Many migrant women work as domestic workers. However, labour inspections are not carried out in private households. That leaves domestic workers unprotected and therefore vulnerable to abuse and exploitation.

64. Irregular migrants also work in small businesses or in informal work as street vendors. Such workplaces are monitored by government labour inspectors who carry out their work alongside the Migration and Foreigners Service. Irregular migrants found working are arrested, detained and face deportation. Consequently, migrants are reluctant to report exploitation or publicly protest or mobilize. The Special Rapporteur was informed that migrants often resort to bribing law enforcement officials in order to avoid arrest.

65. Migrants are at a heightened risk of exploitation and abuse in the workplace because of several factors: unfamiliarity with the language, their rights at work and national labour and migration laws; limited or denied access to legal systems; dependence on the job and employer due to migration-related debt; precarious legal status; and reliance by family members on remittances sent back home by the migrant. Those factors are amplified by the discrimination and xenophobia that migrants increasingly face in Angola.

B. Xenophobic and discriminatory acts

66. Undocumented migrants and their children suffer discrimination because of inadequate access to basic education, housing and health care. In addition, migrants face a constant outpouring of negative rhetoric, which is currently used extensively in relation to migrants and which equates all undocumented migrants to criminals and religious extremists.

67. Major cultural differences between Angolans and their West African counterparts have resulted in a negative image of people of the Muslim faith. The Special Rapporteur received information indicating that the Government is yet to publicly respond to help quell the concerns of its citizens about practising Muslims and the need to embrace diversity within society. The Special Rapporteur received information that, in some instances, it is public officials who use negative language when referring to migrants and incite fear of those of Muslim faith.

C. Access to justice

68. Migrants have difficulty accessing complaint mechanisms, partly because of a lack of information and legal representation, and partly because they fear being immediately detained and deported.

69. Migrants in detention are not given prompt access to a competent lawyer through an accessible legal aid system. The Special Rapporteur was concerned at reports that undocumented migrants may be subjected to detention without recourse to a court to pronounce on the legality of the detention.

70. Migrants in detention are not given prompt access to a competent interpreter, free of charge, if needed.

71. Migrants and people who assist them, such as lawyers, civil society organizations and international organizations such as UNHCR, often lack information on procedures and practices in the migration and protection proceedings. Increased effort must be made to give migrants access to relevant information in real time.

72. More efforts are needed to provide migrants with effective access to justice.

73. The Special Rapporteur noted the need for more effective employer sanctions, as well as more effective investigation and prosecution for offences by employers under the Labour Law. In that respect, he regrets the low number of court cases that have been brought against abusive employers.

VII. Conclusions and recommendations

74. **The Special Rapporteur noted that there is a dearth of national data relating to migration, especially on irregular migration and the informal sector. Such a severe lack of information hinders thorough analysis during a country visit and is an obstacle for Angola to sufficiently protect the human rights of migrants. The Special Rapporteur was informed that, where qualitative or quantitative data do exist, they remain difficult to access publicly. The Special Rapporteur strongly recommends that the Angolan authorities establish a comprehensive migration strategy that takes into account all aspects of migration and fosters regular status for most migrants through organizing and facilitating mobility, rather than trying to resist it. The new framework should be firmly human rights-based and should establish mechanisms empowering all migrants to properly defend their rights, with the support of civil society.**

75. **A sustainable human rights environment requires a vibrant civil society, including independent unions. A strong civil society, with experience and expertise in how human rights are protected and promoted on the ground, constitutes an essential alert mechanism. Many of the representatives of civil society that the Special Rapporteur met either vehemently presented "illegal migrants" as a threat, or were utterly silent and unsure as to why they were meeting with the Special Rapporteur. Migrants' rights cannot be effectively protected and promoted if civil society is stifled or under the authorities' influence.**

76. **The Special Rapporteur urges the Angolan authorities to provide the space necessary for civil society to continue to advocate for migrant rights and contribute to policies and practices affecting the human rights of migrants, in order to foster a healthy public debate on the issue.**

77. **The Special Rapporteur recommends that the Angolan authorities take the action detailed below.**

A. Normative and institutional framework for the protection of the human rights of migrants

78. **Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

79. **Ratify the relevant ILO Conventions, including the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Domestic Workers Convention, 2011 (No. 189) and the Private Employment Agencies Convention, 1997 (No. 181) and consider seeking technical assistance from ILO to ensure that Angolan legislation and practice are in line with those Conventions.**

80. **Withdraw the reservation to article 26 of the 1951 Convention and recognize freedom of movement for all foreigners, including asylum seekers and refugees, with only very restrictively delineated and individually justified exceptions.**

81. **Establish a fully independent national human rights institution, compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and offering a proper complaint mechanism, which would enhance the protection of the human rights of all in Angola, including migrants.**

82. **Ratify the Optional Protocol to the Convention against Torture and establish a national preventive mechanism to undertake regular unannounced visits to all places of deprivation of liberty in Angola, including migrant detention centres.**

83. **Develop bilateral mobility agreements with neighbouring countries, such as the one that has been concluded with Namibia. In the absence of advancing on mobility provisions, such bilateral mobility agreements, which would include human rights safeguards, would allow for the regularization of migrants, the portability of social benefits between member States, and the protection of their rights.**

84. **Develop migration and mobility agreements, initially with neighbouring countries, which provide a much-needed labour force in the mining and construction industries and other forms of low-wage labour.**

85. **Conduct ex ante and ex post human rights impact assessments when considering trade or mobility agreements and their utility in identifying issues of concern to migrants.**

B. Border management

86. **Request the Commission for Migration Policy, which was set up to develop a response to growing migration trends in Angola, to focus on developing a comprehensive human rights-based migration strategy covering all aspects of the governance of migration into Angola. In developing the strategy, the Commission should focus not only on the benefits of migration in the development of the economy, but also ensure that the human rights and labour rights of migrants are fully respected.**

87. **Decriminalize undocumented migration, which, while constituting a violation of some administrative rules, is not and should never be considered a crime.**

88. **Expedite the registration of all asylum seekers living in Angola in order to quickly finalize and implement the regulation relating to the issuance of high-quality identification documentation for asylum seekers and refugees, which will improve access to public services and prevent arbitrary arrest and detention; and commit to issuing documents for asylum seekers and refugees in a timely manner.**

89. **Collaborate with UNHCR to monitor and protect refugees. Considering the number of asylum seekers and refugees in Angola and the protection challenges, including the implementation of the new Asylum Law of June 2015, UNHCR should not scale down but increase its protection capacity in Angola.**

90. **Establish the new institution responsible for refugee determination so that all asylum seekers and refugees can be registered and issued with high-quality identification documents in a timely manner.**

91. **Increase the capacity of the Migration and Foreigners Service Commission to enable it to swiftly issue the required identification documents to undocumented migrants, particularly those living in border areas.**

92. **Collaborate with civil society organizations and international organizations to raise awareness among documented and undocumented migrants about asylum and immigration procedures and how they can they can access and use that information.**

C. Detention

93. **Ensure that detention is used only as a measure of last resort and for as short a period as possible, and continue developing alternatives to detention.**

94. **Ensure that detainees are provided with the possibility to contact their family, their consular authorities, UNHCR, civil society organizations and a lawyer. Detainees must be allowed to keep their mobile telephones.**

95. **Ensure that civil society organizations and international organizations are able to independently monitor, without restriction, all places where migrants are detained.**

96. **Provide appropriate detention conditions and ensure that all detained migrants have easy access to a means of contacting their family, consular services and a competent lawyer, whose services should be free of charge if necessary, an interpreter, and that they have the right to promptly challenge their detention.**

97. **Adhere to the Standard Minimum Rules for the Treatment of Prisoners, which apply to all categories of prisoners, both criminal and those imprisoned under any other non-criminal process, which set out minimum standards for, inter alia, personal hygiene, clothing, bedding, food, exercise, access to communication with the outside world and medical services.**

98. **Develop alternatives to detention for children and families with children, as the administrative detention of children for immigration purposes can never be in their best interest.**

99. **Ensure that all detained migrants have access to proper medical care, interpreters, adequate food and clothes, hygienic conditions, adequate space to move around and access to outdoor exercise.**

100. **Systematically inform detained migrants in writing, in a language they understand, of the reason for their detention, its duration, their right to have access to a lawyer, their right to promptly challenge their detention and their right to seek asylum.**

D. Access to justice

101. **Swiftly investigate reports of law enforcement officials who bribe, confiscate property, use unnecessary force to arrest, detain and deport irregular migrants and who physically abuse them. Those prosecuted and condemned should face stiff sanctions.**

102. **Establish programmes that facilitate access to justice for migrants by providing adequate information about protection options available, simplifying judicial procedures, establishing mechanisms for effectively reviewing the necessity of any detention, and providing free or affordable quality legal representation and quality interpretation to migrants for all the procedures they need to undergo.**

103. **Effectively implement existing legislation, including by providing quality legal representation, prosecuting perpetrators of violations and imposing meaningful sanctions on entities and individuals who violate migrants' rights.**

104. **Ensure full and proper access to justice for all detainees, including a more accountable system for lodging complaints within detention and reception centres.**

105. **Ensure that appeal proceedings are based on the merits and validation of detention.**

106. **Guarantee fully the right to free legal assistance in expulsion, detention and asylum procedures to all migrants, refugees and asylum seekers in primary legislation, and ensure it is implemented in practice.**

107. **Provide human rights training to all law enforcement officials and civil servants who come into contact with migrants.**

108. **Investigate allegations of bribery, confiscation of property, physical abuse, intimidation, torture, ill-treatment and harassment of migrants by law enforcement officials, and provide appropriate sanctions for perpetrators.**

109. **Create a strong and effective labour inspection system, with more labour inspectors who are properly trained on human rights and labour standards. Labour inspectors should monitor the enforcement of labour laws, including by interviewing migrant workers, reviewing their contracts, ensuring that they are allowed to keep their passports, and that they are issued with identity documents and are paid on time and in full.**

110. **Reinforce the capacity of trade unions to defend the labour rights and human rights of migrant workers, and foster a vibrant civil society that can contribute experience and expertise to a healthy public debate on migration policy and practice.**

111. **Strengthen the mandate of the Office of the Ombudsperson in relation to the monitoring of migrants' rights.**

E. Cross-cutting concerns

112. **Extend the free birth registration campaign to cover all foreigners born in Angola, including undocumented migrants and refugees, in order to ensure that they are guaranteed access to economic, social and cultural rights without discrimination.**

113. **Take all appropriate and effective measures, including the adoption of policies and programmes under its comprehensive migration strategy, to combat and eliminate discrimination against migrants, and fight negative perceptions of migrants.**

114. **Develop campaigns and effective enforcement of laws prohibiting racist and xenophobic acts, hate speech and racially motivated violence against migrants and asylum seekers. Ensure that perpetrators of such acts are prosecuted and punished, and that appropriate compensation is awarded to the victims.**

115. **Avoid criminalization of irregular migrants in language, policies and practice, and refrain from using incorrect terminology such as "illegal migrant".**

116. **Strengthen civil society so that it can better advocate for migrant rights and contribute to policies and practices affecting the human rights of migrants, in order to foster a healthy public debate on that issue.**

117. **Consider seeking technical assistance from the Office of the United Nations High Commissioner for Human Rights in order to make sure Angolan legislation, policies and practice are in line with human rights treaties, and consider seeking assistance from ILO in terms of labour law, policies and practice.**

118. **Consider the inclusion of a human rights adviser in the office of the United Nations Development Programme in Angola.**

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Report of the Special Rapporteur on the human rights of migrants on his mission to Greece

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights of migrants, François Crépeau, on his follow-up visit to Greece from 12 to 16 May 2016.

The Special Rapporteur met with government representatives, civil society organizations, the National Commission for Human Rights and the Ombudsperson, as well as with migrants themselves, including in detention centres and informal camps.

The Special Rapporteur recognizes progress made on law and policies directed at managing migration and at border management.

As Greece is the custodian of an external European Union border, the Special Rapporteur recommends that the Government of Greece and the European Union institutions develop durable human rights-based solutions for migrants and asylum seekers in Greece, including on the important issue of border management, and adopt strategic long-term migration and mobility policies in accordance with international human rights law.

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Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*

I. Introduction

1. From 12 to 16 May 2016, the Special Rapporteur on the human rights of migrants conducted an official follow-up visit to Greece, at the invitation of the Government. The mission was carried out in the context of follow-up to the Special Rapporteur's year-long study on the management of the external borders of the European Union and its impact on the human rights of migrants (A/HRC/23/46), which included a mission to Greece (A/HRC/23/46/Add.4), and of his thematic report on European Union border management (A/HRC/29/36).

2. In September 2014, the Human Rights Council, through presidential statement 27/3, requested the Special Rapporteur to pay particular attention to the protection of migrants at sea. Consequently, the present report is focused on external border control and does not provide a comprehensive overview of the broader human rights situation of all migrants in Greece. The visit gave the Special Rapporteur the opportunity to assess the progress made, as well as the obstacles and challenges that remain, in protecting and promoting the rights of migrants in the Euro-Mediterranean region.

3. The Special Rapporteur visited Athens, Idomeni and Polykastro in Central Macedonia, as well as the Aegean islands of Samos and Lesvos. He met with State officials at the national and local levels, international organizations, European Border and Coast Guard Agency (Frontex) officials, civil society organizations and migrants themselves. He also visited several places of detention and official and unofficial camps, namely Polykastro Police Station, the unofficial camp in Idomeni, the Vathy Reception and Identification Centre in Samos, the Elliniko Pre-Removal Centre for Migrant Women at Elliniko Police Station, the camp in the Olympic stadium of Elliniko, and the Moria Reception and Identification Centre in Lesvos.

4. The Special Rapporteur expresses his sincere appreciation for the cooperation extended to him by the Government prior to, throughout and after the visit. He also thanks the Office of the United Nations High Commissioner for Refugees (UNHCR) and civil society organizations for their valuable contributions.

II. General background: migration and border management in Greece

5. In the past two years, Greece has been the main entry point for irregular migrants coming to Europe. More than 900,000 migrants arrived in Greece in 2015, of whom 93 per cent arrived by sea.[1]

6. Most of those migrants intended to transit through Greece and travel towards northern Europe. When the former Yugoslav Republic of Macedonia decided to close its border with Greece, more than 10,000 migrants got stuck at the border in Idomeni. Another 35,000 migrant women, men and children were living in open reception facilities or in unofficial camps throughout the Greek mainland.[2]

7. The first reception and identification centre started operations in March 2013 at the Greek-Turkish border region in Evros. Greece built five additional reception and

* Circulated in the language of submission only.

[1] International Organization for Migration, "Global migration trends factsheet 2015", available from https://publications.iom.int/system/files/global_migration_trends_2015_factsheet.pdf.

[2] UNHCR, "Daily map indicating capacity and occupancy, as of 16 May 2016", available from https://data2.unhcr.org/en/documents/download/47586.

identification centres on five Greek Aegean islands between October 2015 and March 2016, four of which were functioning at the time of the visit.

8. Additionally, with the European Union-Turkey statement of 18 March 2016 (discussed in detail in paras. 28-30 below) having been implemented, migrants arriving on the islands after 20 March 2016 have had only two options: to apply for asylum or to be returned to Turkey. This has resulted in 90 per cent of migrants trying to apply for asylum in Greece. The situation has stretched the capacity of the Greek Asylum Service and has led to a complicated system of registration and pre-registration.

9. Following the European Union-Turkey statement, migrants were no longer transferred from the Greek islands to the mainland, resulting in overcrowded situations in the reception and identification centres on the islands, with migrants often lacking access to sanitary facilities, medicine, adequate shelter and food.

10. Even though the Greek system was not prepared to host and process such large numbers of migrants, it has shown real resolve — during a time of imposed financial austerity — in putting in place a principled response to assist all irregular migrants arriving. However, going forward, the country needs a strategic long-term plan to guide all response efforts: one that respects the international obligations of Greece and the human rights of all people in its territory. Despite the pressure on Greece to return all migrants arriving irregularly on the Greek islands after 20 March 2016, and with the exception of two incidents where an investigation has been ordered, the Special Rapporteur was informed that none of the approximatively 25,000 people who have arrived since have been returned to Turkey in violation of the principle of non-refoulement.

A. Normative and institutional framework for the protection of the human rights of migrants

11. In this section, the Special Rapporteur discusses the legal framework that has been developed since his previous country visit to Greece.

1. International legal framework

12. On 11 February 2014, Greece ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, designating the Greek Ombudsperson as the national preventive mechanism.

2. Regional legal framework

13. The European Union's acquis on migration and asylum is applicable to Greece as a European Union Member State, and Greece has undertaken the necessary legal reforms to transpose relevant European Union directives. Greece is also a part of the Schengen area, which provides for the strengthening of external border controls and eliminates internal border controls. As a Member State of the European Union, Greece has an obligation to respect the Charter of Fundamental Rights of the European Union when implementing European Union law. As a member of the Council of Europe, Greece has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

14. Because of two judgments of the European Court of Human Rights and the European Court of Justice,[3] European Union Member States suspended transfers to Greece under the Dublin II Regulation. The Special Rapporteur welcomed the decision on the suspension of transfers and strongly urges the European Union Member States to refrain from returning any asylum seekers to Greece, as the procedural and capacity facilities are already stretched to their limit.

[3] *M.S.S. v. Belgium and Greece*, European Court of Human Rights, No. 30696/09, 21 January 2011, and *N.S. and M.E. and others*, C-411/10 and C-493/10, European Court of Justice, 21 December 2011.

15. Since publication of the last report (A/HRC/23/46/Add.4), the European Court of Human Rights has handed down the following judgments concerning Greece:

16. In *Sharifi and others v. Italy and Greece*,[4] the European Court of Human Rights found that it was for the refouling State to assure that the receiving State offers sufficient guarantees that an individual will not be removed without an assessment of the risks faced in his or her country of origin.

17. In its judgment in *B.A.C. v. Greece*,[5] the European Court of Human Rights found that Greece had violated the right of an asylum seeker to respect for his private life, due to the failure of the Greek authorities to deal effectively with his asylum application. The applicant had waited for the asylum appeal decision for 12 years.

18. Furthermore, the European Court of Human Rights has handed down various decisions concerning the inhumane and degrading detention conditions of migrants in Greece, such as in *Horshill v. Greece*[6] and *Sakir v. Greece*,[7] furthermore stating that no effective remedy had been available to complain about the conditions of detention. In *Mahammed and others v. Greece*, it additionally found shortcomings in the procedure reviewing the lawfulness of the applicants' administrative detention.[8]

B. National legal, institutional and policy framework

1. Legal framework

19. In this section, the Special Rapporteur will touch only upon legislation introduced following his first country visit to Greece in 2012. Since then, there has been a significant degree of reform in relation to the legal framework concerning the human rights of migrants within Greece.

20. Law 3386/2005 was amended by Law 4521/2014 which was enacted to transpose into Greek law Directive 2011/98/EU and Directive 2014/36/EU. Law 3386/2005 is the main law governing migration. Law 4521/2014 has since been amended by Law 4332/2015.

21. Under article 121 of Law 4249/2014, irregular entry into Greece has been defined as a penal offence. The Public Prosecutor has the option, within 48 hours of an irregular entry, to press charges against or to abstain from pressing charges against the individual entering in an irregular manner.

22. Law 4375/2016 was adopted under an urgent procedure on 31 March 2016 and entered into force on 3 April 2016, to transpose into Greek legislation the provisions of Directive 2013/32/EU and Directive 2013/33/EU, as well as to transpose legal reforms needed for the implementation of the European Union-Turkey statement of 18 March 2016. Law 4375/2016 introduces a considerable number of changes to the institutional framework, the first reception procedures, the asylum procedure, the labour rights of beneficiaries of international protection and to the management of refugees entering Greece.

23. The asylum procedure is governed by a twofold legal framework under Presidential Decree 114/2010 for claims lodged before 7 June 2013 (the "old procedure") and Presidential Decree 113/2013 for applications filed after that date (the "new procedure"), which were repealed by Law 4375/2016. Law 4399/2016, adopted after the Special Rapporteur's visit, provides further provisions on the asylum procedure.

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[4] *Sharifi and others v. Italy and Greece*, European Court of Human Rights, No. 16643/09, 21 October 2014.

[5] *B.A.C. v. Greece*, European Court of Human Rights, No. 11981/15, 13 October 2016.

[6] *Horshill v. Greece*, European Court of Human Rights, No. 70427/11, 1 November 2013.

[7] *Sakir v. Greece*, European Court of Human Rights, No. 48475/09, 24 March 2016.

[8] *Mahammed and others v. Greece*, European Court of Human Rights, No. 48352/12, 15 January 2015.

24. While the Special Rapporteur recognizes that the introduction of new laws and amendments to existing legislation allowed for a quick solution to pressing issues, he urges the Greek authorities to harmonize the laws governing migration and asylum under one single act.

2. National policies and institutions

25. Under the Greek Action Plan (2010-2014), three new administrative services independent from the Hellenic Police have been established: the First Reception Service, the Appeals Authority and the Greek Asylum Service.

26. The Ministry of Migration Policy was established by Presidential Decree 123/2016 (National Gazette 208/A/2016) and oversees the Appeals Authority and the Greek Asylum Service. Furthermore, Law 4375/2016 establishes the Reception and Identification Service, as an autonomous directorate, to replace the First Reception Service within the Ministry of the Interior and Administrative Reconstruction. The Reception and Identification Service is under the mandate of the General Secretariat for Reception.

27. The Hellenic Police and border guards, under the Alternate Ministry of Public Order and Citizen Protection, remain responsible for the surveillance of land borders. The Hellenic Police is responsible for the detention of migrants in pre-removal detention facilities and for returns. The Hellenic Coast Guard is responsible for the surveillance of sea borders and for search and rescue at sea.

C. Border management

1. Greece and the European Union: regional influence on national laws, policies and institutions in the sphere of migration management and border control

"Hotspot approach"

28. In response to the unprecedented numbers of migrants arriving in Europe irregularly, the European Agenda on Migration introduced the "hotspot approach" as the model of operational support for European Union frontline States. The European Union Regional Task Force coordinates actions of Member States and relevant European Union agencies, such as the European Asylum Support Office, Frontex and Europol, with the aim of swiftly identifying, registering and fingerprinting arriving migrants. Asylum applicants are referred to the national asylum procedure, where European Asylum Support Office teams support national authorities. Migrants who do not apply for asylum or whose application is rejected are returned with the support of Frontex. Europol and Eurojust assist the host Member State with investigations on smuggling and trafficking networks. In order to guarantee human rights protection at all steps of the process in the hotspots, the Special Rapporteur encourages incorporation of the European Union Agency for Fundamental Rights as an integral part of the European Union Regional Task Force.

The European Union-Turkey statement

29. On 18 March 2016, the European Union and Turkey decided that all new irregular migrants crossing from Turkey to the Greek islands after 20 March 2016 would be returned to Turkey. They explicitly stated that Turkey would be either a "first country of asylum" or a "safe third country", and that for every Syrian returned to Turkey from the Greek islands, another Syrian would be resettled in the European Union. Simultaneously, Turkey would take any necessary measures to prevent new sea or land routes for irregular migration from opening from Turkey to the European Union.

30. The Special Rapporteur was informed that all returns from Greece to Turkey before 1 June 2016 would be carried out under the Greece-Turkey readmission protocol. From 1 June 2016, the European Union-Turkey Readmission Agreement provisions on readmission of third-country nationals would be enforced.

31. The Special Rapporteur is concerned that the European Union-Turkey statement constitutes a political "deal" without mandatory value in international law. Its legal basis is

undetermined and it cannot be legally challenged in courts. Despite its effects, the European Court of Human Rights has determined it to be non-reviewable.[9] Greece was put under considerable pressure to implement provisions from the statement well before its entry into force and to apply maximum constraints on migrants, in order to achieve the objective of returning most migrants to Turkey. Therefore, 13 out of the 202 migrants returned on 4 April 2016 may have been mistakenly returned, as their asylum claims had not been registered.

Financial implications

32. Greece has been allocated €294.6 million under the European Union Asylum, Migration and Integration Fund and €214.8 million under the Internal Security Fund, for the period 2014-2020. Additionally, €356.8 million was granted for emergency assistance, whereas by mid-March 2017 €182 million was directly awarded to Greek authorities.[10] These budget allocations should fund reception centres on the islands, provide support for return operations, or fund temporary deployment of additional Greek staff or European Union Member States' national experts.

33. While the Special Rapporteur welcomes the support provided to Greece in order to ensure appropriate reception conditions, and additional capacity to process the increased number of asylum applications, he is concerned that the largest amount in terms of funding is allocated to preventing irregular migration and implementing the European Union-Turkey statement, which also funds deportations and voluntary returns. The European Union needs to ensure that the funded activities do not come at the expense of the human rights of migrants identified for readmission.

2. Rescue at sea

34. Following strict securing of borders on the land route, the main entry points to Greece are through sea routes.

35. In December 2015, Frontex initiated the deployment of 293 officers and 15 vessels to the Greek islands as part of a new operation named Poseidon Rapid Intervention, following Greek requests for additional assistance. This replaces Operation Poseidon Sea, and has a higher number of officers assisting with identifying and fingerprinting arriving migrants. Furthermore, it aims to provide Greece with additional technical assistance in order to strengthen its border surveillance, registration and identification capacity. At the time of the visit, Frontex had deployed 734 personnel, which included the crew of 13 vessels and two helicopters supporting Greece in patrolling the Aegean islands.

36. The Special Rapporteur was informed that the Hellenic Coast Guard focused on detecting boats early, leading to a decreasing number of deaths of migrants at sea, and resulting in the rescue of a considerable number of refugees and migrants under Operation Poseidon Sea. Since the European Union-Turkey statement, arrivals have decreased drastically, as a large number of the boats have been intercepted by Turkish coast guards in Turkish waters.

37. While the Special Rapporteur welcomes the renewal of sea operations, he insists that the primary focus of such operations should be search and rescue and not combating irregular migration.

38. According to the information received, the North Atlantic Treaty Organization currently assists Greece and Frontex through real-time information, intelligence, surveillance and reconnaissance operations in the Aegean Sea. The Special Rapporteur is highly concerned over the deployment of military operations in the context of migration

[9] *NF, NG and NM v. European Council*, Order of the General Court of the European Union (First Chamber, Extended Composition), 28 February 2017.

[10] European Commission, "Managing the refugee crisis: European Union financial support to Greece", 15 March 2017, available from https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/20170321_factsheet_managing_refugee_crisis_eu_financial_support_greece_-_update_en.pdf (accessed on 20 April 2017).

movements and stresses that, whatever the actors, the focus should remain exclusively on saving lives.

3. Reception and identification process

39. Migrants arriving on the Greek shore or rescued at sea are brought to the reception and identification centres for the registration and identification process, fingerprinting, and Eurodac registration conducted by the Greek police and assisted by Frontex.

40. The Reception and Identification Service and the police conduct a first interview to identify vulnerabilities. The European Asylum Support Office provides support in identifying persons who wish to apply for asylum. It also provides information on the relocation procedure and operational support to the Dublin Unit, and has provided infrastructure in terms of office space and equipment, as well as hundreds of interpreters to interpret from the languages of asylum seekers into English. Law 4399/2016 further enables European Asylum Support Office officials to conduct interviews of applicants on the merits in the context of the exceptional procedure applied at the border, with decisions taken by the Greek Asylum Service.

41. At arrival, Frontex also conducts debriefing interviews to gather intelligence on smuggling and trafficking networks, following which Europol runs second-line checks to identify possible smugglers and report them to the national authorities. The Special Rapporteur strongly recommends that adequate safeguards be put in place in order to ensure that these interviews take place on a strictly voluntary basis. Such interviews should not take place upon arrival, as often migrants are traumatized from the journey and such interviews may increase their fear of the authorities and lead them to hide protection needs, abuse suffered or vulnerabilities experienced.

4. Return

42. The European Union has funded an emergency forced return programme under the Asylum, Migration and Integration Fund, implemented by the Greek police. Frontex supports building return capacities through screening, facilitating cooperation with embassies, and coordinating detention and return flights.

43. The European Union's assisted voluntary return programme provides up to 1,000 migrants per year with the possibility of voluntarily returning to their countries of origin. Since 2010, with funding by the European Return Fund and the Greek authorities, the International Organization for Migration has implemented the assisted voluntary return of third-country nationals to their country of origin. By 18 May 2016, the International Organization for Migration had registered 3,024 migrants since the beginning of that year who wished to return to their country of origin.[11]

III. Detention practices and legislation

A. Pre-removal detention centres

44. According to Law 3907/2011, detention for third-country nationals for the purpose of return is applied when there are no other adequate and less restrictive measures and when: (a) there is a risk of absconding; or (b) the third-country national avoids or hampers the preparation of return or the removal process; or (c) there are reasons of national security. Law 3907/2011 allows for a maximum period of detention of 18 months.

45. At the time of the visit, around 1,200 migrants were held in pre-removal detention centres, in Petrou Ralli, Amygdaleza, Corinth, Xanthi, Paranesti and several police stations across the country.

[11] See www.iom.int/sites/default/files/situation_reports/file/Europe-Med-Migration-Response-Sitrep21-19May.pdf.

46. At the Elliniko Pre-Removal Centre for Migrant Women, very few activities are offered to the migrants. Health care is insufficient as there is no doctor present on site, and detainees complained about inadequate health care, particularly those with mental health issues. Furthermore, it was reported that dietary requirements and secondary health-care needs were not taken seriously.

47. Most detainees in the Elliniko Pre-Removal Centre for Migrant Women expressed their wish to apply for asylum or to register for assisted voluntary return. However, they were lacking information about the next steps in the procedure and complained about delays in the procedure. Most of them had been in detention for six months or longer, whereas it is stated in Law 4375/2016 that the detention of an asylum seeker constitutes a ground for accelerating the asylum procedure. The Special Rapporteur is concerned that the delay in registering their claim for asylum puts them at potential risk of return in violation of the non-refoulement principle and he urges authorities to swiftly register and process asylum claims of detainees. Furthermore, he observes that Greek law provides for the possibility for the Greek Asylum Service to issue a recommendation to the police authorities regarding the continuation or the lifting of a detention order. He strongly encourages the implementation of alternatives to detention. It must be noted however, that according to information provided by the Greek Asylum Service in March 2017, the average duration for the examination of asylum claims of those detained in the Elliniko pre-removal centre was less than one month.

48. Alternatives to detention are often not considered by the Government, and an individual assessment mechanism to determine the necessity, proportionality and reasonableness of detention in each individual case in accordance with Law 3907/2011 is not consistently applied. The absence of an automatic periodic judicial review makes it difficult to determine the lawfulness of detention.

49. Detainees have the right to appeal and submit objections against their detention, as provided in article 76 of Law 3386/2005. However, legal aid in immigration detention facilities provided by non-governmental organizations (NGOs) is scarce due to funding shortages. Moreover, migrants in pre-removal detention centres are often unaware of their legal status and do not know about the possibility of challenging their detention.

50. Contact with the outside world is difficult for some detained migrants. Cell phones are confiscated and access to a phone is not guaranteed for those who do not have money to pay for calls themselves. This prevents detainees from obtaining information or evidence to substantiate their claims. Situations of anxiety, post-traumatic stress disorder or trauma may also make it difficult for detainees to understand their rights, thus in fact preventing them from making effective use of existing review mechanisms. As there is no reason for preventing migrants from communicating with family, friends, lawyers, consular services or any other person, prohibiting cell phones can have a profound effect on their mental health and is utterly unnecessary. The practice should be abolished.

B. Detention upon arrival

51. Under article 14 of Law 4375/2016, new arrivals are subject to a restriction on their freedom of movement: within the premises of the reception and identification centres on the Aegean islands or in Evros. While the provision does not refer to detention, the Special Rapporteur observed that there was a de facto systematic detention of migrants. Furthermore, at the time of the visit, detention often lasted longer than the legally prescribed 25 days during which time migrants are not able to leave the centre. Information provided after the visit indicates that it now lasts less than 25 days. Detainees must be informed, in a language they understand, of the reasons for their detention and their rights, including the right to challenge their detention and the right to legal aid. As migrants detained in the hotspots do not receive a detention order, challenging the detention decision is impossible.

52. The Special Rapporteur deeply regrets the policy of increasing the use of detention of persons irregularly entering Greek territory, including unaccompanied children and families. Measures must be taken to ensure a proper individual assessment of all migrants

in order to identify vulnerabilities, with a determination of the limited number of migrants for whom detention is necessary, the reason why it is necessary, and the immediate release all the other migrants with an appropriate status.

53. At the time of the visit, there were around 8,556 migrants held in reception and identification centres and open reception centres on the Greek islands of Chios, Samos, Lesvos, Kos and Leros, while the facilities had a capacity of 7,450 places.[12] The overcrowded conditions in Moria in Lesvos, and in Vathy in Samos, were particularly shocking: Moria was housing around 3,000 people, with a capacity for only 2,000, and in Vathy only one part of the camp was open, with capacity for 250 people, however on the day of the visit it was housing up to 950 migrants, including families with children. At the end of February 2017, the number of migrants on the islands stood at 13,053, despite a capacity of 9,014 — further exacerbating the situation.[13] While recognizing the improvements made or planned by the Greek authorities over time, the Special Rapporteur still urges the Government to immediately transfer migrants to more suitable structures.

54. Mandatory detention upon arrival, coupled with uncertainty over the future, leads to an immeasurable amount of confusion, frustration, violence and fear among the migrants held in the reception and identification centres on the Greek islands. Since the implementation of the European Union-Turkey statement, there have been regular demonstrations and violent riots in the camps, fights between different groups of migrants, attacks on tents and on containers, and attempted suicides. The Special Rapporteur visited the Vathy reception and identification centre on Samos following a night of fighting, which left behind shattered tents and containers, pools of dried blood, several persons injured and families with small children completely traumatized, and left single females feeling unsafe. In the absence of a camp manager, no one felt responsible for the situation. The Special Rapporteur was informed that the police had failed to intervene, as they were scared of being outnumbered.

55. The Special Rapporteur is deeply concerned about inadequate detention conditions and the chaotic situation in the reception and identification centres, the blatant overcrowdedness, with a mix of families and young single males, the absence of many government services during the weekend, the lack of policing, and the insufficient procedural safeguards in the detention facilities.

IV. Reception conditions

56. At the end of February 2016, existing official accommodation barely met the needs of the growing migrant population. Greece had to swiftly shift its approach from short-term assistance for persons in transit, with a capacity of less than 2,500 places, to long-term accommodation. At the time of the visit, the European Union provided €83 million under the Emergency Assistance Instrument to improve material conditions for migrants and refugees in Greece, with funding made available immediately to UNHCR and NGOs. On 9 September 2016, the European Commission announced another €115 million under the Emergency Support Instrument.[14] As mentioned above, the Government of Greece was awarded €182 million by mid-March 2017.

A. Reception conditions on the Aegean islands

57. Conditions in the reception and identification centres and the open camps on the Aegean islands are particularly worrying, due to the seriously overcrowded facilities. The reception and identification centres lack sufficient sanitary facilities, adequate food and health care. Despite emergency heated housing during the winter, migrants, including

[12] See https://data2.unhcr.org/en/documents/download/47586.
[13] See https://data2.unhcr.org/en/documents/download/53821.
[14] See http://europa.eu/rapid/press-release_IP-16-2986_en.htm.

families with small children, are mostly housed in tents and communal barracks, leaving them exposed to all weather conditions.

58. The Special Rapporteur notes the lack of a system to detect vulnerabilities. He was informed that segregated sections were provided to host families with children, single women and women with children. However, in practice, he saw families, single females, elderly people and unaccompanied minor children living in common areas, leading to an increased feeling of insecurity, with migrants complaining about the lack of privacy and security. An accurate and effective individual assessment mechanism would prevent vulnerable groups, such as children, especially if unaccompanied, from being detained in such conditions.

59. On Lesvos, provisions are put in place for vulnerable migrants to be transferred to the open camp of Kara Tepe or to the Greek mainland. However, due to slow and inefficient screening procedures, and with limited capacity to host all of the population in need, many migrants who belong to a vulnerable group remain in Moria. The Special Rapporteur was informed that only cases that seem to be able to prove their vulnerability through a health professional's screening assessment are identified as vulnerable by the Reception and Identification Service.

B. Reception conditions on the mainland

60. Following the border closure in February 2016, the urgent need for housing led to the establishment of additional accommodation centres; in parallel, several informal settlements developed in public squares. When the European Union-Turkey statement took effect, around 9,000 persons were stuck in the Greek capital and its surroundings. In the Olympic stadiums in Elliniko — visited by the Special Rapporteur — more than 4,000 people, most of them families with children, were sleeping in tents on the concrete floor, most of them in the former airport terminal waiting areas.

61. At the same time, more than 10,000 migrants, including families with children, lived in the informal camp settlement in Idomeni, at the border with the former Yugoslav Republic of Macedonia, in small tents in open and dismal conditions. Among the inhabitants were many vulnerable migrants, such as unaccompanied minors, persons with physical and psychosocial disabilities and elderly migrants, without adequate protection. Frustrations and insecurity over the future led to conflict and violence between individuals and the neglect of children. Money, or services such as access to Skype, were often earned through sexual favours.

62. The Special Rapporteur commends the Greek authorities for swiftly responding to the immediate need for shelter. The Hellenic Army opened and equipped around 30 camps by the time of the visit and 15 more were planned. The Greek authorities have tried to persuade thousands of refugees and migrants to move to the army-built camps around the country, sometimes with the ultimatum of moving voluntarily within two weeks or being removed by force. The Special Rapporteur received information that the main criteria for migrants to move would include proximity to a city or town, Wi-Fi, registration possibilities for the asylum procedure, access to the camp being granted to civil society organizations (and not only to the Hellenic Army), activities and education for children, and social support and health care for adults and children. Creating trust between migrants, government officials and other actors is of the utmost importance. "Warehousing" migrants will not respond to their needs.

C. Overall concerns on reception and accommodation facilities

63. Serious overcrowding in reception and identification centres and official and unofficial camps on the mainland, substandard living conditions, and a lack of adequate food, health care and information have led to anxiety, depression, confusion and frustration among the migrant population both on the mainland and on the islands. Hunger strikes, violent confrontations and threats of self-immolation occur across the country. The Special Rapporteur observed an overwhelming insecurity, due to a lack of proper policing within

the open reception centres and closed detention facilities. At the time of the visit, the lack of sufficient interpretation and legal services was leading to additional confusion about procedures and migrants' rights.

64. Access to a medical doctor and medical staff is insufficient, particularly for vulnerable groups in need of highly specialized medical assistance. The Special Rapporteur observed a lack of secondary health care: people with diabetes or chronic diseases find it difficult to access appropriate medication. Specialized services required for mental health care or for torture victims are insufficient in most of the places of accommodation. Accessibility of drugs and medical examinations is challenging, as the public health system is overwhelmed. In addition, there are barriers to effective access to health care, when cultural sensitivities are not taken into account or because of a lack of interpreters.

65. The Special Rapporteur observed the absence of separate living spaces for single women, families and unaccompanied minors, leaving women and children at heightened risk of abuse. Sanitary facilities and showers are insufficient and the Special Rapporteur heard of accounts of sanitation facilities without adequate lighting at night or locks on doors, with female camp residents being scared to use the facilities at night.

66. The lack of appropriate food in sites is a protection concern that affects the nutritional needs of the most vulnerable, including children, the elderly and pregnant women. Parents of small babies complained about the lack of food and formula, and specific dietary requirements were not made available in all of the places visited.

67. Despite the goodwill of many actors, their roles were often unclear, which led to organizational issues, confusion and wrong perceptions of responsibilities among migrants and refugees. The Special Rapporteur is particularly concerned over the lack of contingency planning and of proper and organized camp management. He underlines the need for effective and professional camp management, in order to ensure proper coordination and rationalization of all activities by all actors, thus avoiding loss of control and overwhelming confusion, and to ensure non-discrimination among nationalities, which is needed to build trust by promoting equality and fairness in accessing services.

V. Access to international protection

A. The steady growth of the Greek Asylum Service

68. The Special Rapporteur acknowledges efforts to strengthen the Greek Asylum Service over the past three years; it has opened seven regional asylum offices and 10 asylum units, providing substantial regional coverage.

69. The intake of asylum seekers by Greece in 2016 was one of the highest in Europe. At the time of the visit, the Asylum Service was not in a position to cope with the 50,000 applications for asylum, family reunification and relocation in one go, which posed problems in regard to access to international protection and regularizing the stay of asylum seekers.

70. In 2016, the Asylum Service registered 51,092 applications for international protection.[15] The asylum system is governed by a twofold principle: the "old procedures" under Presidential Decree 114/2010, under the responsibility of the police, and the "new procedures" under Presidential Decree 113/2013, repealed by Law 4375/2016 in line with the recast European Union asylum directive and amended by Law 4399/2016. The presence of many different laws, with different authorities dealing with asylum claims, makes the asylum system difficult to navigate.

71. The Special Rapporteur was informed that the Asylum Service was to significantly increase its capacity by the end of June 2016 and increase the processing of asylum claims from 80 to 640 claims per day. The average decision rate of the Asylum Service for 2016

[15] See http://asylo.gov.gr/en/?page_id=110.

(for refugee status determination, for negative decisions, for subsidiary protection, and on the admissibility procedure) was 2,032 decisions per month.[18] By early 2017, the number of trained staff of the Asylum Service had nearly tripled. In order to guarantee effective access to the asylum procedure, the Special Rapporteur urges the Asylum Service to further increase its capacity with trained staff, so that migrants have quick access to the procedure, with due regard to the need to maintain the quality of the asylum procedure. Furthermore, increased capacity would reduce the overcrowded situation on the islands by allowing transfers of asylum seekers to the mainland. The Special Rapporteur was informed by the Government that by early 2017, the number of trained staff in the Asylum Service had nearly tripled and the average duration of the asylum procedure at first instance was 72 days.

72. At the time of the visit, the Asylum Service had initiated a pre-registration exercise for asylum seekers on the mainland, for them to register their interest to apply for asylum, to provide them with information and asylum seeker documents providing protection from deportation and to give access to services. The Special Rapporteur notes that the pre-registration operation had been successfully completed by August 2016, and pre-registered asylum seekers had been fully registered by the end of February 2017, had received interview appointments and had the right to work.

73. In order to improve access to the different procedures, the Asylum Service inaugurated a new system to make appointments by registration through Skype. The Special Rapporteur observed some serious flaws in the Skype-based system, such as limited time slots allocated for specific languages. The system fails to take into account the insufficient computer skills of applicants and the lack of access to equipment or access to the Internet, especially for those in open centres on the Greek mainland. In order to help address those weaknesses, the Asylum Service is cooperating with NGOs that provide assistance to asylum seekers.

74. The Special Rapporteur is seriously concerned about obstructions in accessing international protection and observes that the lack of an effective and quick registration system puts migrants at risk of arrest, detention and deportation. At the time of the visit, no free legal aid system was in place for Greece, and NGOs providing legal assistance had only limited capacity. He notes that in mid-2016, a free legal aid system had been put in place by UNHCR and NGOs with funding provided by the European Union.

75. Article 51 (6) of Law 4375/2016 provides that asylum applications from vulnerable persons may be registered and examined as a matter of priority. In the absence of a functioning system to detect vulnerabilities, it is uncertain whether this provision could always be applied. The Special Rapporteur was informed however, that the Reception and Identification Service, as well as UNHCR and NGOs, refer vulnerable persons to the Asylum Service. In addition, if at any stage of the asylum procedure vulnerability is detected, examination of the claim is immediately prioritized.

B. Access to information

76. Because of the changes that the European Union-Turkey statement had triggered in the complex asylum procedure, the Special Rapporteur observed a lack of access to information on the rights of migrants and on procedures, and timelines for applying for protection remained unclear. The Special Rapporteur has been informed that, since then, serious efforts have since been undertaken, in cooperation with the Reception and Identification Service, UNHCR and NGOs, to address this, with the enhancement of the website of the Asylum Service and of its social media accounts, and the creation of an app for mobile phones. Leaflets have been printed and disseminated to the reception and identification centres and open reception facilities. Such efforts should be pursued.

77. In the absence of central coordination, and with the multiplication of different actors in the camps, much misinformation circulates, which creates confusion and mistrust among

[18] Ibid.

the migrants. Furthermore, various levels of bureaucracy make the process incomprehensible to most. People receiving the wrong information may make harmful decisions, being unaware of the consequences. Given the complexity of the procedures, and the constantly changing legislation and practices, as well as the bureaucratic hurdles, access to information and legal assistance for migrants seems all the more important.

C. Lack of due process guarantees

78. Law 4375/2016 extends the criteria for an asylum application to be inadmissible and defines exceptional derogation measures that can be applied in case of an exceptional number of persons applying for international protection at the border. These provisions raise serious concerns over due process guarantees.

79. An application is considered inadmissible for a number of reasons, including the existence of a "first country of asylum" or a "safe third country", whereas Greece has never applied the concept of a "first country of asylum". Vulnerable groups are exempt from the inadmissibility procedure.

80. The Special Rapporteur was informed about certain nationalities being processed as a priority and is concerned that discrimination based on nationality undermines the right to due process, as it hinders persons belonging to a specific nationality from accessing the asylum system, family reunifications or relocations. The procedure's priorities should not be based on one's nationality, but rather on vulnerabilities. The Special Rapporteur was informed that, by the end of 2016, all asylum applications were being processed strictly on the basis of the date of arrival, taking into account vulnerabilities and objective factors such as availability of interpretation.

81. Admissibility decisions issued are consistently short, qualify Turkey as a safe third country and reject the application as inadmissible: this makes them practically unreviewable. The Special Rapporteur is concerned that admissibility interviews will overlook protection concerns, including those of vulnerable groups, and that people may be returned in violation of the non-refoulement principle. The Special Rapporteur was informed that between May 2016 and March 2017, of the 27,000 asylum applications that had been made, only 1,609 were rejected on the basis of the "safe third country" principle and another 2 414 were rejected on their merits.

82. Derogation measures, on the other hand, include the registration of applications by the police and armed staff and the possibility of officials of the European Asylum Support Office supporting national authorities. Law 4375/2016 specifies that the process shall be completed within 15 days including the appeal stage, which raises concerns over access to an effective remedy, despite the support of NGOs. The Special Rapporteur is concerned that asylum seekers may not be granted a fair hearing of their case, as their claims are examined under the admissibility procedure, with a very short deadline to prepare. Provisions under the fast track regime are problematic due to the lack of individual assessment of each case, and the risk of violating the non-refoulement principle is consequently very high.

83. Competent lawyers and NGOs should be able to have access to migrants in reception and identification centres and open camps. Despite legal assistance being available for the second instance of the asylum procedure, the Special Rapporteur encourages allocation of the necessary resources for capacity-building and for local lawyers and bar associations to be able to offer properly paid services from the start of the procedure.

D. Appeals Authority

84. The Special Rapporteur welcomes the continuing work of the Appeals Committee mandated to deal with the backlog of appeals lodged under the "old asylum procedure". In

2013, 51,000 appeals were outstanding, as compared to 8,075 in September 2016.[17] Law 4375/2016 provided for the automatic regularization of applicants who lodged their appeal up to five years before the publication of Law 4375/2016. Greece should continue its efforts to clear the backlog, in order to ensure applicants the right to an effective remedy.

85. With the European Union-Turkey statement taking effect, the Backlog Appeals Committee was mainly examining appeals concerning the admissibility procedures in the reception and identification centres. The Special Rapporteur commends the independence of the Committee, which, in the absence of sufficient guarantees, refused to accept the blanket statement that Turkey is a safe third country for all migrants — despite enormous pressure from the European Commission — and overturned first-instance decisions accordingly. By December 2016, it had overturned close to 400 decisions and upheld only 17 decisions from the first instance.[18] With such a ratio, the Special Rapporteur urges first-instance decision makers to properly examine admissibility criteria.

86. The Special Rapporteur notes that Law 4375/2016 brings about several improvements, such as the provision of free legal aid and longer deadlines to appeal, with appeals having an automatic suspensive effect against return orders. He urges the authorities to take the necessary steps to ensure the right to free legal aid for all applicants.

87. The Special Rapporteur notes that, following his visit, Law 4399/2016 was approved by the Greek Parliament, on 16 June 2016, modifying the composition of appeals committees. The new appeals committees are responsible for examining all appeals against decisions of the Greek Asylum Service lodged since 20 July 2016. The Special Rapporteur urges the Government of Greece to put the Appeals Authority into full operation, in order to avoid any further accumulation of a backlog and to ensure effective access by migrants to a remedy.

VI. Cross-cutting concerns

A. Xenophobia and violence against migrants

88. During his follow-up visit, the Special Rapporteur noted that there were five new special prosecutors for racist crimes. Furthermore, he was informed that Parliament had been suspending State financing of political parties whose officials had been provisionally detained for racist crimes, and the trial of members of the far-right Golden Dawn party was ongoing. He also noted that the National Board against Racism and Intolerance and new police units and offices had been established to investigate acts of racist violence. A hate speech monitoring mechanism remains to be implemented.

89. Civil society efforts have been commendable, local authorities have provided much-needed support, and local populations must be congratulated for their hospitality, their donations and their patience. Well aware that the Greek population is under austerity measures, the Special Rapporteur commends the generosity reflected in large donations of medication, clothes and food items. However, he also noted concerns over what would happen if the atmosphere changed and turned against refugees and migrants. Following his visit, he received worrying news about increases in racist and xenophobic attacks against migrants, exacerbated by the economic crisis in Greece, and he urges Greek authorities to decisively implement the national policies on interculturalism and on combating discrimination, xenophobia and racism.

[17] European Commission recommendation, 8 December 2016, available from https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20161208/recommendation_on_the_resumption_of_transfers_to_greece_en.pdf.

[18] Ibid.

B. Children

90. More than one third of the migrant population in Greece are children. Conditions in closed facilities in reception and identification centres are deplorable, leaving children at heightened risk of abuse, neglect, violence and exploitation. Alternatives to detention, in the form of open shelters for families and unaccompanied minors, with appropriate counselling and services, must be established as a matter of urgent priority.

91. However, at the time of the visit, even open reception facilities in Greece were ill equipped to adequately host the large number of refugee children with a variety of needs for support and protection, care, education and access to food, for a prolonged period. The substandard conditions in camps expose them to risks of chest infections, hypothermia and diarrhoea.

92. The Special Rapporteur welcomes the elaboration of the National Action Plan for Children's Rights, under the coordination of the General Secretariat for Transparency and Human Rights. The action plan should address emerging challenges in regard to children's rights in the context of the economic and refugee crises.

93. At the time of the Special Rapporteur's visit, migrant and refugee children did not have access to schools, resulting in long-term gaps in their education, as the majority of children had been out of school for far longer than their journey to Europe. The Special Rapporteur welcomes measures taken following his visit that provide for the enrolment of migrant children in the national education system or for the creation of school annexes dedicated to migrant and refugee children.

1. Unaccompanied minors

94. The Public Prosecutor acts as the temporary guardian of an unaccompanied minor, until a permanent guardian can be selected. Because of the large number of children entrusted to his office, the Public Prosecutor is not able to act effectively in the interest of migrant children, which has huge implications for all aspects of the protection and exercise of unaccompanied minors' rights.

95. The Special Rapporteur welcomes the Government's proposals to develop a more structured system of guardianship for unaccompanied minors. Guardians need the necessary professional training, experience, expertise and competence, as well as appropriate support and resources. The best interest of the child depends on the guardian being able to make the best and quickest decisions possible on all matters of concern. The Special Rapporteur commends the efforts of civil society to provide volunteer guardians to unaccompanied migrant children and notes that policy development is in the works.

96. In order to decide on the appropriate procedure, age assessment is required. The Special Rapporteur has been informed that in the reception and identification centres, age assessment is often carried out by NGOs. In case of doubt, the person concerned is referred to the hospital. According to ministerial decision 1982/2016, age assessment is determined by a macroscopic medical examination.

2. Family reunification

97. The Special Rapporteur was informed that a large number of unaccompanied minors have family in another European Union Member State. Consequently, in their attempt to avoid detection, children are repeatedly exposed to exploitation and violence, which is particularly apparent during their repeated attempts to reach another European country irregularly.

98. The Special Rapporteur was informed that the Dublin procedure is often lengthy and that it may take 15 to 18 months for children to be reunited with their family members, due to DNA tests required by the receiving States. This is unacceptable and the procedure should be shortened.

3. Protective custody

99. Due to a shortage of suitable accommodation or of a comprehensive protection system for child asylum seekers and migrants, children are often detained in "protective custody", in reception and identification centres, or in police stations or pre-removal centres under police custody, while awaiting referral to an adequate shelter facility, which often takes longer than the 45 days prescribed by law.

100. The number of shelter places available for unaccompanied minors is drastically below needs. The Special Rapporteur was informed that there were 347 shelter spaces for unaccompanied minors as of 8 March 2016, and 119 unaccompanied minors were waiting to be placed in a shelter. By mid-February 2017, the number of unaccompanied minors was 2,100, while the available shelters could only accommodate 1,310.[19]

101. The Special Rapporteur met with unaccompanied minors, detained in a separate section in the Moria Reception and Identification Centre and welcomes the information that many were transferred to shelters between his visit and March 2017. Some of them were seriously traumatized and reported bullying and incidents of violence, without protection from the supervising authorities. On the mainland, the Special Rapporteur met unaccompanied minors locked in police station cells 24/7 without access to the outdoors for over two weeks and without any recreational or educational activity. He was informed that some may stay for a month or more.

102. Children in "protective custody" lack access to interpreters, to legal assistance, and to information presented in a child-friendly manner, and hence are not aware of their reason for detention, of the next steps in the process and of their rights. Most of them face serious mental health issues, with a particularly high number of suicide attempts. Psychological services are often not available, although some local NGOs provide such services.

103. Overall, as determined by the Committee on the Rights of the Child, administrative detention based on the immigration status of the child or of his or her parents can never be in the best interest of a child. Given the incalculable detrimental effects that detention has on children's mental and physical health and development, it is utterly unacceptable for children to be detained simply because of an administrative status.

104. Regardless of the conditions in which children are held, detention has a profound and negative impact on child health and development. Even short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. The threshold at which treatment or punishment may be classified as cruel, inhuman or degrading is therefore lower in the case of children, and in particular in the case of children deprived of their liberty.

VII. Role of the European Union

105. While responding to the urgent needs of migrants within Greece, the country is simultaneously under pressure to implement austerity measures, which have severe consequences on the Greek people. It is therefore critical that the responsibility be shared, that international obligations be upheld, and that the human rights of all be protected.

106. The "migration crisis" is not simply a political problem: the full measure of the constitutional, European and international frameworks applies. Although the European Union adopted two decisions in 2015 to relocate at least 66,400 persons from Greece, the Special Rapporteur notes that relocation remains a big challenge. As at 27 February 2017, only 9,610 transfers had taken place.[20] Unfortunately, the behaviour of many actors in the European Union, and especially in European Union Member States, seems to indicate that they consider human rights and the rule of law to be dispensable in regard to migrants under these circumstances. The Special Rapporteur urges the European Union to urgently

[19] See https://data2.unhcr.org/en/documents/download/53990.

[20] See https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_tenth_report_on_relocation_and_resettlement_annex_1_en.pdf.

relocate unaccompanied minors, even if, because of their nationality, they are not eligible for the relocation programme, and encourages Member States to process requests for family reunions swiftly.

107. A coherent, European Union-wide approach is needed, with a long-term vision for migration and mobility, which sees European countries offering safe and regular channels for mobility for refugees and for migrants. The challenge for all actors is to find appropriate policies for responding to the migration movements without infringing on the human rights of migrants or shunning the rule of law.

VIII. Conclusions and recommendations

108. **Greece has made commendable progress in implementing the revised Action Plan on Asylum and Migration Management and in working jointly with the European Union and other international partners to improve the situation of migrants in Greece.**

109. **The Special Rapporteur proposes detailed recommendations to the Government, in sections A to E below:**

A. Normative and institutional framework for the protection of the human rights of migrants

110. **Develop and implement a long-term comprehensive migration strategy that has the human rights of migrants and refugees as its framework. Pursue close collaboration and coordination with international organizations such as UNHCR, the International Labour Organization (ILO), the Office of the United Nations High Commissioner for Human Rights and civil society to protect and promote the human rights of migrants and refugees in elaborating and implementing this strategy. Ensure that migrant integration, through language and work, is central to such a strategy.**

111. **Implement and fully respect regional and international human rights obligations and uphold the rule of law in favour of all migrants in the implementation of its migration policies.**

112. **Reinforce, with competent staff and resources, human rights institutions, such as the National Commission for Human Rights and the Office of the Ombudsperson, in order to allow them to effectively carry out their mandate, including the oversight of all detention centres for migrants.**

113. **Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which would provide the Government of Greece with a useful framework for managing migration while ensuring full respect for the human rights of migrants.**

114. **Ratify the ILO Labour Inspection (Agriculture) Convention, 1969 (No. 129), Migration for Employment Convention (Revised), 1949 (No. 97), and Domestic Workers Convention, 2011 (No. 189), to ensure full protection against forced labour for all categories of workers, and effective oversight of labour conditions.**

B. Border management and returns

115. **Implement a human rights-based approach to border management, ensuring that the rights of migrants are always the first consideration.**

116. **Fully adhere to its human rights obligations, including to the principle of non-refoulement, for example through the prevention of pushbacks.**

117. **Train local fishermen in search and rescue operations, and support commercial vessels to carry out rescue operations in exceptional circumstances without running**

the risk of retaliation or harassment for being considered accessories to smuggling operations.

118. Provide clear instructions and rules for the Hellenic Police and the Reception and Identification Service on how to deal with migrants who have just crossed the border and on how to systematically conduct individual screening to determine if the person has protection needs.

119. Ensure full respect of the human rights of migrants in relation to implementation of all readmission agreements concluded.

120. Ensure that migrants have full access to lawyers and interpreters in order to appeal return decisions and prevent the refoulement of persons in need of protection.

C. Reception facilities

121. Urgently consider alternatives to detention for all migrants, and especially unaccompanied minors and families with children. Detention should only be ordered in exceptional circumstances, as provided in Law 4375/2016, article 46, and in the European Union Returns Directive.

122. Conduct individual assessments of the limited number of migrants for whom detention is necessary and provide documentation of the individualized reasons why it is necessary.

123. Strictly refrain from detaining unaccompanied minors or families with children, in conformity with the principles of the best interests of the child and of family unity.

124. Further improve detention conditions and procedural safeguards, and develop appropriate regulations for all detention facilities, in line with international human rights standards.

125. Ensure full access to all detention facilities for lawyers and civil society organizations, and continue to ensure a system of systematic, independent monitoring of detention centres.

126. Provide appropriate detention conditions in all centres, including in pre-removal centers, and ensure that all migrants deprived of their liberty are able to promptly contact their family, to have access to a lawyer who should be free of charge if necessary, to seek asylum if the migrant requests it, to have access to a doctor and to an interpreter as necessary, to have access to their mobile phones, and to have the capacity to promptly challenge their detention.

127. Ensure that standards in all facilities in which migrants are held meet the standards established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT standards", 2013 revision) addressing specifically the special needs and status of migrants in detention, and by the Standard Minimum Rules for the Treatment of Prisoners.

128. Ensure, in cooperation with regional and international partners, more appropriate long-term accommodation arrangements, and urgently establish decent living conditions in all reception and detention centres for migrants and asylum seekers by providing adequate health-care services, food, and sanitary conditions.

129. Provide clear and systematic information regarding all migration policies to all stakeholders, including migrants themselves and all those who have a responsibility to promote and protect the human rights of migrants, such as government officials, international organizations, civil society and lawyers. Provide human rights training to all government officials working with migrants, especially those who receive them at borders and in detention.

130. Appoint camp management immediately for every hotspot and every open camp, in charge of coordinating activities of all actors and protecting the human

rights of all migrants. Provide clear and public information about the authority of the management at the central level.

D. Asylum seekers

131. **Streamline the various laws governing the asylum procedures in one single act, and pursue efforts to provide clarity regarding all procedures related to regularizing migrants.**

132. **Pursue efforts to ensure that all detained persons claiming protection concerns are adequately informed of their right to seek asylum and are able to file an asylum application and communicate with the Greek Asylum Service, lawyers and civil society organizations.**

133. **Pursue efforts to guarantee effective and timely access to the asylum procedure, ensuring an individual assessment of each applicant's claims. To that end, ensure that sufficient asylum offices are opened and that sufficient and trained staff for the Reception and Identification Service and the Asylum Service are available.**

134. **Pursue efforts to provide and distribute information in a language that the migrants understand, in writing and orally, informing the migrants about all their rights and all the protection mechanisms. This should be provided by qualified and trained staff and should cover all aspects of the procedural steps concerning the asylum procedure, the relocation scheme, family reunification, and their possible implications.**

135. **Take appropriate measures to ensure a proper individual assessment of all migrants in order to identify vulnerabilities, so that their needs can be addressed immediately and appropriate procedures can be initiated.**

136. **Provide information notes about the rights and obligations of all migrants who arrive, and use effectively the individual assessment carried out for detecting vulnerabilities in order to provide better-structured information. Provide prompt access to legal aid and to an interpreter, to all detained migrants.**

137. **Continue to ensure due process guarantees in the asylum procedure, with guarantees of a fair hearing, effective remedies, non-refoulement and non-collective expulsion.**

138. **Allocate the necessary resources for capacity-building and for local lawyers and bar associations to be able to offer properly paid services from the start of the procedure.**

E. Cross-cutting concerns

139. **Criminalize the dissemination of ideas based on racial superiority and prohibit organizations that promote and incite racial discrimination.**

140. **Investigate all cases of xenophobic violence and attacks against migrants, including any law enforcement involvement in these crimes. In order to undertake proper investigations, irregular migrants must be able to report these crimes without risking detention: a "firewall" needs to be established between the office of the public prosecutor in charge of such crimes and immigration enforcement authorities.**

141. **Initiate strong public discourse on social diversity and inclusion, which stresses the importance of fighting discriminatory behaviour and attitudes towards marginalized persons and groups, including migrants, regardless of their administrative status.**

142. **Conduct public campaigns on racism and xenophobia and, in cooperation with international organizations and civil society, include human rights education and awareness-raising in the educational curriculum of public schools.**

143. **Improve the human rights training of all persons working in the area of migration, including judges, lawyers, police officers, border guards, prison guards, and public and private detention officers.**

144. **Enhance support for civil society organizations that provide support to migrants, including through European funding.**

145. **Ensure that those who offer services, such as assistance to search and rescue operations, medical support, shelter and legal advice, are explicitly protected from prosecution under the facilitation directive.**

146. **Ensure full respect of the human rights of migrant children and give primary consideration to their best interests in all actions concerning them, regardless of their administrative status. In particular:**

(a) **Refrain from detaining children, whatever the circumstances, and provide them with appropriate accommodation, by significantly increasing the shelter capacity for unaccompanied minors;**

(b) **Systematically undertake age assessments to identify children, using the least intrusive measure, and ensure they are treated in accordance with their age; also establish due procedural guarantees in this respect, including the right to appeal;**

(c) **Implement the National Action Plan for Children's Rights, ensuring that all children are able to access education and health-care services, by involving all ministries concerned. Ensure access by all migrant children to the national health-care system, including for all the vaccinations they need. Ensure access by all migrant children to the national education system, making sure they can be enrolled in school as soon as possible.**

147. **Develop a national system for the protection of unaccompanied minors, giving primary consideration to their best interests in all actions concerning them, including by:**

(a) **Reinforcing the guardianship system, by appointing a guardian for each unaccompanied minor, as required by Greek law, and ensuring that guardians undergo the necessary professional training, have the experience, expertise and competence (such as social workers), and are appropriately supported with the necessary resources. Increase the number of social workers who can carry out the role of a guardian;**

(b) **Establishing a registry for guardians and the training of a specialized prosecutor for minors;**

(c) **Increasing the capacity for the reception of unaccompanied minors in appropriate, open and safe reception facilities, and facilitating their stay with foster families;**

(d) **Accelerating the family reunification procedure and assisting unaccompanied and separated children with family reunification under the Dublin III Regulation and relocation mechanisms.**

F. Recommendations to the European Union

148. **Ensure that the full protection of the human rights of all migrants, regardless of their status, is the primary consideration for its support for Greek efforts in managing the movement of migrants entering European Union territory, and provide the necessary human and financial resources to fully and meaningfully support Greece. Further develop and implement a long-term comprehensive migration strategy, which has the human rights of migrants as its core framework.**

149. **Ensure that the human rights of all migrants concerned are the primary consideration in the implementation of the European Union-Turkey Readmission Agreement.**

150. **Create a clear, independent and permanent mechanism for a thorough ex post human rights impact assessment of the European Union-Turkey statement, which would cover all of its aspects. Such mechanism should capture the changing features of its implementation over time, especially considering the lengthy period that it takes for claims of constitutional or European Union human rights law violations to go to courts and tribunals.**

151. **Ensure an independent and thorough human rights impact assessment to overview how the European Union migration agenda, the European Union-Turkey statement and all future agreements on mobility and migration are carried out.**

152. **Establish and implement a European Union human rights accountability mechanism under all agreements such as the European Union-Turkey statement.**

153. **Enhance the role of the Fundamental Rights Agency by incorporating it in the European Union Regional Task Force, thereby ensuring that human rights are mainstreamed in all processes in the hotspots.**

154. **Encourage more sharing of solidarity and responsibility among European Union Member States in relation to borders, asylum and migration, and ensure quick implementation of the decisions on the relocation of asylum seekers from Greece, based on needs assessments rather than nationality. Ensure a quick response to requests for family reunification and provide assistance in facilitating it. Continue to invest in dignified reception conditions, especially for the most vulnerable.**

155. **Significantly increase the support provided to Greece for initiatives that improve the condition of migrants in the hotspots and in open reception facilities. Significantly increase the support to Greek departments and institutions working directly with migrants.**

156. **Support Greek authorities in providing alternatives to detention, especially in managing the hotspots that have turned into closed detention facilities.**

157. **Provide the Greek authorities with the necessary resources to support the efforts by Greece to put an end to the detention of unaccompanied migrant children and to ensure that there are sufficient and suitable alternatives to detention. Greece and European Union Member States should intensify efforts to relocate unaccompanied asylum-seeking children out of Greece, including through family reunification with family members living in other European Union countries through the Dublin III Regulation mechanisms, without delay and without consideration of status.**

158. **Support the Greek Asylum Service, the Reception and Identification Service and the Dublin Unit by allocating the necessary funds to increase their staff. Increase the support by other Member States for qualified human resources.**

159. **Continue the support, both technical and financial, for civil society organizations offering services and support to migrants, regardless of their administrative status.**

160. **Refrain from returning migrants to Greece under the Dublin mechanism, but allow asylum seekers to register their asylum claims in the country of their choice within the European Union, while supporting the countries receiving asylum claims with proportionate and adequate financial and technical support.**

161. **Support the European Network of National Human Rights Institutions, the European Network of Ombudsmen and the European Network of Ombudspersons for Children, in order to allow them to support their member institutions in providing full oversight of migration detention and service provision mechanisms.**